1445

SUPREME COURT OF THE UNITED STATES.

No. 147.

ARCHIBALD BABCOCK, APP'T,

vs.

EDWARD WYMAN.

APPEAL FROM THE CIRCUIT COURT U. S. FOR MASSACHUSETTS.

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UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a Circuit Court of the United States for the first Circuit, begun and holden at Boston, within and for the District of Massachusetts, on Monday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, before the Honorable Benjamin R. Curtis, associate justice, and the Honorable Paleg Sprague, district judge—

In Equity,

EDWARD WYMAN
versus
ARCHIBALD BABCOCK,

The bill of complaint in this cause was filed in the clerk's office at the October term thereof, A. D. 1852, to wit, March 26th, 1853, and is in the words and figures following, to wit:

To the honorable the judges of the Circuit Court of the United States for the district of Massachusetts:

Humbly complaining, sheweth unto your honors, your orator, Edward Wyman, of St. Louis, in the county of St. Louis and district and State of Missouri, a citizen of the State of Missouri, that Nehemiah Wyman, then of Charlestown, in the county of Middlesex and district and commonwealth of Massachusetts, was seized in fee-simple of a certain lot of *of* land, situated in said Charlestown, containing about eleven acres and a half, bounded southerly on the road leading to Cambridge, about fourteen rods and twenty links; thence easterly and southwesterly on land sold by said Nehemiah to James Foster; then easterly on land of the heirs of Jonathan Ireland; then southerly on land of the heirs of Jonathan Ireland; then southeasterly on land of Timothy Walker; then northeasterly on land of Mr. Lamson; then northwesterly on a rangeway, thirty-five rods and fourteen links; then westerly on the same rangeway, five rods and thirteen links; then southwesterly on land of the widow Stearns, six rods and nine links; then westerly on land of the widow Stearns, thirteen rods and twelve links; then southwesterly on land of Alexander Geddes, two rods and twenty links; then westerly on land of said Geddes, twenty rods and eighteen links, to Cambridge road aforesaid, being the same land bought by the said Nehemiah of Joseph Tufts, administrator, by deed recorded in the Middlesex registry of deeds,

book 235, page 55, excepting about an acre at the southeasterly corner, sold by the said Nehemiah to James Foster, by deed dated the first day of October, A. D. 1825, and of which the said Nehemiah had taken back a mortgage from the said James Foster, of the same date, to secure six hundred and nine dollars of the consideration money of his said sale to said James, and under which mortgage the said Nehemiah had taken possession of the acre so by him sold to said James; that the whole of the said tract of about twelve acres and a half, of which the said Neheimah as owner and fee and as mortgagee of said James was thus possessed, had been, previous to his said sale of an acre to said James Foster, to wit, by deed dated the first day of December, A. D. 1820, mortgaged by said Nehemiah to Francis Wyman, of said Charlestown, his brother, to secure three promissory notes due from said Nehemiah to said Francis, bearing even date with said mortgage, one of said notes being for the sum of six hundred and seventy-six dollars, payable in one month from date, with interest payable semi-annually; another of said notes being for the sum of six hundred and fifty dollars, payable in six months from date, with interest payable semi-annually; and the other of said notes being for the sum of *seve* hundred and four dollars, 39-100, payable in one year from date, with interest payable semi-annually, as will more fully appear by a duly certified copy of said mortgage deed, herewith filed, marked (A,) to be taken as a part of this bill of complaint. That shortly after receiving said mortgage deed, the said Francis Wyman duly executed his last will and testament, dated June 14, 1822, wherein and whereby amongst other things he devised and bequeathed to Archibald Babcock, of said Charlestown, in the district and commonwealth of Massachusetts, merchant, a citizen of the State of Massachusetts, all his real and personal estate, including said notes and mortgage executed and due to him from said Nehemiah, in trust for his wife and children, upon certain trusts therein expressed, and constituted said Archibald sole executor of his said will. That shortly after the making of said last will and testament, to wit, on or about the day of August, A. D. 1822, the said Francis Wyman died, and on the 20th day of said August, his said last will and testament was duly approved by a court of probate, holden at Charlestown, within and for the county of Middlesex, and was ordered to be recorded, all of which more fully appears by a duly certified copy of said last will and testament, herewith filed, marked (B,) and of the decree of probate thereof, herewith filed, marked (C,) to be taken as a part of this bill of complaint. That on or about the first day of December, A. D. 1824, the said Nehemiah Wyman paid to said Archibald Babcock, trustee and executor as aforesaid, one of said notes due by him to the estate of said Francis Wyman, to wit, the note for seven hundred and four dollars, with the interest due thereon, and took up the same; and from time to time paid to said

Archibald the interest on the other two notes secured by said mortgage, up to December first, A. D. 1826. That at the same time that said Nehemiah Wyman sold to said James Foster the acre aforesaid of said mortgaged tract, to wit, on the first day of October, A. D. 1825, the said Archibald Babcock, by his deed of release of that date made to said James Foster, discharged said acre from said mortgage thereon, as from certified copies of said deeds herewith filed, marked (D and E,) to be taken as part of this bill of complaint, will more fully appear; that in the latter part of the year 1825, or in the year 1826, the said Nehemiah Wyman, being then in business as a butcher and provision dealer, in Faneuil Hall market, became greatly embarrassed in his affairs, and having entire trust and confidence in his brother-in-law, the said Archibald Babcock—the said Archibald having married the sister of the said Nehemiah and Francis—he, the said Nehemiah, on the twenty-sixth day of April, A. D. 1826, by his deed of that date, mortgaged to said Archibald the said tract or lot of land of eleven acres and a half, or thereabouts, being that portion of said land then held by said Nehemiah as tenant in fee, as security for a note of the same date for twelve hundred dollars, then made by said Nehemiah to said Archibald, payable in one year from its date, with interest, as will more fully appear by a certified copy of said mortgage deed, herewith filed, marked (F,) to be taken as a part of this bill of complaint. That in fact and in truth, at the time of the execution of said note and mortgage by said Nehemiah to said Archibald, little or nothing was due from him to said Archibald as an individual, but it being understood that said Archibald might and would from time to time become bound as surety for or advance money to said Nehemiah in his embarrassments, it was agreed by and between them that said note and mortgage should be held by said Archibald as security for such suretyship and advances; that between the date of said note and mortgage and the 20th day of November, A. D. 1828, the said Archibald Babcock did become bound for and advance money for the said Nehemiah, to the amount of four hundred dollars and upwards, for which said note and mortgage would stand as security under the agreement aforesaid. That in addition thereto there was due from said Nehemiah, to the heirs-at-law of his father, for rent of their real estate by him improved, the sum of one hundred and thirty-six dollars and seventy-one cents; and the said Archibald Babcock being the agent of the said heirs for the collection of the same, the said Nehemiah, in settlement and security for said several sums, executed to said Archibald the following promissory notes: one on the 7th day of November, A. D. 1828, and of that date, for the sum of four hundred and eighty-six dollars and seventy-nine cents, payable to said Archibald Babcock or order, on demand, with interest, four hundred dollars and eight cents of which were due to said Archibald individually, and eighty-six dollars and

seventy-one cents to the heirs of Nehemiah Wyman, the elder—the father of said Nehemiah, the maker of said promissory note. Another on the eleventh day of November, A. D. 1828, of that date, for the sum of eight dollars and ten cents, due from the said Nehemiah to said Archibald; and on the same day, and of that date, a third, for the sum of fifty dollars, payable on demand, with interest, which sum was due from said Nehemiah to the heirs of his father for rents, as aforesaid. That the said Nehemiah Wyman, being thus indebted to the said Archibald Babcock, in the capacities of the latter as trustee and executor under the will of Francis Wyman, as agent for the heirs of the father of said Nehemiah, and as an individual, and his embarrassments continuing to increase so that he could no longer continue to pay the interest accruing on his two remaining mortgage notes due to the estate of said Francis Wyman, upon the payment of which the heirs of his said brother Francis depended for their support, it was urged upon him by the said Archibald, and by his brother, William Wyman, that he should make a clear deed in fee of said lot of land of eleven and a half acres to said Archibald Babcock; that the said Archibald might manage and improve the same, and apply the rents and profits thereof to the payment of the interest on the incumbrances thereon, and to the gradual liquidation of his said debts. That the said Nehemiah was very reluctant thus to place his property out of his hands; but having full confidence in the said Archibald, as his brother-in-law and friend, and finding that his compliance with the request of said Archibald and of his brother William thereto was the sole condition upon which the latter would consent to assist him in the settlement of his embarrassed affairs, he did at last agree to convey said tract or lot of land to said Archibald Babcock, by a clear deed in fee, it being at the time of said agreement, and afterwards at the time of the execution of the said deed, hereinafter set forth, expressly agreed and understood between him and the said Archibald, that notwithstanding the form of said conveyance, it was to stand as security only for the payment of the several sums due to said Archibald as trustee and executor under the said will of said Francis Wyman, on the mortgage aforesaid, executed by said Nehemiah to said Francis in the lifetime of the latter, and due to said Archibald individually, and as agent of the heirs of the father of said Nehemiah, on the three several promissory notes last aforesaid, and that said Archibald would manage and improve said lot of land for the best interest of said Nehemiah, applying the rents and profits thereof to the payment and keeping down of said incumbrances thereon; and that he, the said Nehemiah, should have the land again at any time upon payment to said Babcock of the amount thus secured upon it. That thereupon, on the twentieth day of November, A. D. 1828, a memorandum of the several amounts due by said Nehemiah to said

Archibald in his said capacities, and individually, for principal and interest on the two mortgage notes belonging to the estate of Francis Wyman, and of the other three notes last aforesaid, due to said Archibald individually and as agent as aforesaid, was prepared by Archibald D. Babcock, since deceased, son and then clerk of said Archibald Babcock, and handed to said Nehemiah as evidence of the amount for which his said lot or tract of land was pledged or mortgaged to said Archibald; and the said Nehemiah did thereupon, on said twentieth day of November, A. D., 1828, by his deed of that date, upon the promise and assurance aforesaid, and in the trust and confidence aforesaid, convey to said Archibald Babcock, in fee and with warranty, the tract and parcel of land aforesaid, as will more fully appear from a certified copy of said deed, herewith filed, marked (G,) to be taken as a part of this bill of complaint. That upon the execution of said deed by said Nehemiah, neither the mortgage notes belonging to said Francis Wyman's estate, nor the three notes executed on the 7th and 11th of November, 1828, nor the note for twelve hundred dollars, executed by said Nehemiah to said Archibald, as aforesaid, on the twenty-sixth day of April, 1826, were surrendered by said Archibald to said Nehemiah; nor was either the mortgage made to Francis Wyman, or the mortgage made to said Archibald Babcock, cancelled or discharged, but said notes and mortgages remained in the hands and possession of the said Archibald Babcock, after the execution of said last-named deed by the said Nehemiah to him, in the same plight as before, upon the trust and confidence aforesaid, the said Nehemiah holding said memorandum of the amount for which his said estate was liable to said Archibald. And the above promise and assurance of said Archibald, that he might at any time have his said estate again upon payment to said Archibald of what should remain due on the notes mentioned in said memorandum, after deducting the rents and profits received by said Archibald from said estate, as his sole security for his interest therein, that the total amount of the notes mentioned in said memorandum, with interest due thereon up to said twentieth day of November, 1828, adding thereto a sufficient sum for the recording of said last-named deed from said Nehemiah to said Archibald, being precisely the sum named in said deed as the consideration thereof, was two thousand and thirty-three dollars and eighty-seven cents, a sum greatly below the value at which the said Nehemiah had always appraised his said estate, and for which he would not have sold the same, but that neither said sum nor any sum of money whatsoever was, upon said conveyance of said estate by said Nehemiah to said Archibald, paid by said Archibald to him; but the sum named in said deed as paid, was merely intended by said Nehemiah and said Archibald to present the amount due upon said estate at the date of said deed from said Nehemiah to said Archibald, and upon payment of which by said

Nehemiah, his representatives or assigns, with interest, after deducting rents and profits received therefrom, he or they were entitled to redeem said estate. That upon receiving said last-mentioned deed, said Archibald Babcock took possession under the same of said tract or parcel of land therein described, as well as of the acre of land adjoining the same and unfenced therefrom, of which the said Nehemiah held possession under his said mortgage from said James Foster, and annually received therefrom in grass, sand, clay, and ledge-stone, by him obtained therefrom, and used or sold for more than enough to pay the interest accuring on the above amount, for the security of which it was pledged to him, and the taxes by him paid as apparent owner and tenant thereof, until some time in the year 1844, when the said Nehemiah, having removed with his family to the western country, for the purpose of bettering his and their condition—the said Archibald Babcock, regardless of his said trust and the rights of said Nehemiah in said estate, and in fraud of the same, without notice to the said Nehemiah, sold said tract or lot of land at private sale in two parcels—one of four acres, to Gustavus V. Hall, for the nominal consideration of two thousand eight hundred dollars; and one of seven and a half acres, to Charles Pierce, for the nominal consideration of five thousand two hundred dollars, but as your orator believes and avers for a much larger sum, to wit: the sum of dollars in all. That in the making of said sales, the said Archibald Babcock represented himself to be, as by the records he appeared to be, the sole owner of said land, and studiously concealed from said Nehemiah and from his brother, William Wyman, upon whose request and assurance the said Nehemiah had been induced in part to make said deed to said Babcock, his intent to sell the same; and neither disclosed to said purchasers the right and interest of said Nehemiah in said land, nor gave any notice of his intent to sell the same to said Nehemiah nor to said William, whereby they or either of them might have been enabled to put said purchasers upon their guard in making said purchase. That on the fourth day of February, A. D. 1853, the said Nehemiah Wyman, by his deed of that date, conveyed to your orator, the said Edward Wyman, in fee, the said lot or tract of land by him as aforesaid mortgaged to said Archibald Babcock, together with all his right and claim in equity to an account against said Archibald Babcock as mortgagee of the same, or as trustee of the proceeds of the sales of the same, whereby the said Edward Wyman became and was substituted in law and equity to all the rights of the said Nehemiah Wyman, in and to said estate, against said Archibald Babcock as mortgagee of the same, or as trustee of the proceeds of the sales of the same—and to an account of the rents and profits thereof, as well as of said proceeds of sales heretofore received by the said Archibald, as will more fully appear in and by the original of said deed here in Court ready to be produced and

proved, reference thereto being had, and the same being thus produced and proved to be taken as a part of this bill of complaint. That the said Nehemiah, before conveyance and sale to your orator as aforesaid, and your orator since, have frequently applied to said Archibald Babcock to come to an account of the rents and profits of said premises, and of the value of the same, so by him sold without authority as aforesaid, which your orator alleges to amount to a large sum, to wit: to the sum of twenty thousand dollars; and after deducting therefrom the amount of principal and interest due to him individually and in his said capacities, to pay over to him the balance thereof. And your orator well hoped that said Archibald would have complied with such his reasonable request; but now so it is, may it please your Honors, that the said Archibald neglects and evades the just demands of your orator—sometimes pretending that though said deed last mentioned, from said Nehemiah to him, was agreed between them to be but security for the debts aforesaid, yet that said agreement is without effect in equity to control the legal operation of said deed, and that your orator is remediless in the premises; at other times pretending that the claim of your orator has been long since barred by the statute of limitations; and at other times still that by his possessing said estate as mortgagee for six years, all right and title of said Nehemiah was barred and foreclosed; all which actions, doings, and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In tender consideration whereof, and forasmuch as your orator is remediless in the premises, as and by the direct and strict rules of the common law, and cannot have adequate relief save in a Court of Equity, where matters of this and the like nature are properly cognizable and relievable: to the end, therefore, that the said Archibald Babcock may upon his corporal oath, full, true, direct, and perfect answers make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and he thereto distinctly interrogated; and that not only to the best of his knowledge and remembrance, but also to the best of his information, hearsay, and belief, and more especially that he may answer and set forth whether said deed, executed by said Nehemiah to said Archibald, on the 20th day of November, A. D. 1828, was not executed upon the consideration and with the express agreement and understanding with regard to the same, and the rights of said Nehemiah under the same, set forth in this bill of complaint. Whether he, said Archibald, did not, after the execution of said deed, retain in his possession all the notes and mortgages heretofore held by him as an individual, or in his capacities, against said Nehemiah, whether he ever cancelled or discharged the same, or any of them, and if so, at what time, at whose request, and especially if with the knowledge or at the request of said Nehemiah. Whether said Archibald hath not

frequently, and within a short time previously to the filing of this bill, admitted to William Wyman and others, or at any time to said William Wyman alone, that it was originally agreed that said deed should stand as security only for the amount of said debts set forth in the memorandum drawn up at the time by his said son and clerk, Archibald D. Babcock, and delivered to said Nehemiah, and that he always intended to do right in the matter, or words to that effect, but that he had been advised by counsel subsequently that said agreement could not be enforced against him, because not in writing, and therefore refused to proceed further in the matter. Whether he, the said Archibald, did not, at one time, and within two years past, agree with said Wm. Wyman that he would come to an account with said Nehemiah for the price received by him for said land, with interest, and deducting therefrom the debts aforesaid, due to him individually and in his said capacities, pay over to said Nehemiah the balance, provided said Nehemiah would indulge him in the time of payment by taking his notes at long time. And whether he did not agree with said William that he would refer the question of how much rents and profits of said land he should pay to said Nehemiah to the arbitrament of their neighbors, or something to that effect, and to set forth what the agreement made by him with said William in regard to the above matter was. And whether, upon learning from counsel that the said Nehemiah could not enforce his claims upon said Archibald connected with said estate, he did not inform said William of the same, and that he would not account to said Nehemiah for said rents and profits and proceeds of sale. Whether he did not enter into possession of said estate upon the execution of said deed from said Nehemiah to him, dated November 20, 1828, and take and receive the rents and profits thereof, as well as of the acre of which the said Nehemiah was in possession as mortgagee of said James Foster, and continue to receive and take the same until his sale of said estate in 1844, and what rents and profits he received, setting forth an account of the same, year by year, as the same were by him enjoyed or received, with particular items and accounts, during the whole of said period elapsing between the time of his taking possession of said estate and the time of his sale of the same. Whether he did not sell said estate without notice to said Nehemiah or any agent of his, at private sale, and if so, at what time, in what parcels, and at what prices, and how much, and what terms did he, said Archibald, receive of the purchase money of said estate, and what application he hath made of the same, whether he hath paid over the whole of the same, or how much of the same to the heirs of Francis Wyman, and how much, if any, to the heirs of Nehemiah Wyman, the elder; and how much of said purchase money he retained himself, setting forth in detail a particular account of the sums, if any, by him paid over to others, and the sum or sums by him retained to his own use. And especially whether he has paid

over any of said purchase-money to his said brother-in-law, Nehemiah Wyman, the younger, and if so, how much, in what sums, in what manner, and at what time or times. Whether at the time of his said sales of said estate he disclosed to said purchasers the rights of said Nehemiah therein, or gave them, or either of them, any notice thereof. And that said Archibald Babcock may answer the premises; and that an account may be taken of what if anything is due to said Archibald for principal and interest on said mortgage, and that an account may also be taken of the rents and profits of the said mortgaged premises, which have been possessed or received by the said Archibald, or by any other person or persons by his order or for his use, or which, without his wilful default or neglect, might have been received. And that an account be also taken of the value of the premises sold by the said Archibald without authority, and in breach of trust, and in fraud of said Nehemiah as aforesaid, at the time of the sale or sales of the same; and that if it shall appear that said rents and profits and the value of said estate have been more than sufficient to satisfy the principal and interest of said mortgage, then that the residue of said rents, profits and value may be paid over by said Archibald to your orator. And that your orator may have such other and further relief in the premises as to your Honors may seem meet, and as to justice and equity may appertain. May it please your Honors to grant unto your orator a writ of subpœna to be directed to the said Archibald Babcock, thereby commanding him, at a certain day and under a certain pain therein to be inserted, personally to be and appear before your Honors, in this honorable Court, and to stand to and abide such order and decree therein as to your Honors shall seem agreeable to equity and good conscience.

And your orator shall ever pray.

EDWARD WYMAN,
By SAMUEL AMES,
His Solicitor.

SAMUEL AMES,
SIDNEY BARTLETT,
Complainants' Solicitors.

(A.)

Nehemiah Wyman to Francis Wyman.—Mortgage deed and its cancel.

[Certified copy.]

Know all men by these presents, that I, Nehemiah Wyman, of Charlestown, in the county of Middlesex and Commonwealth of Massachusetts, gentleman, in consideration of two thousand and thirty dollars and thirty-nine cents, paid by Francis Wyman, of said

Charlestown, gentleman, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey unto the said Francis Wyman, his heirs and assigns, a certain lot or parcel of land situate in said Charlestown, containing twelve acres two quarters and twenty poles, and bounded as follows, viz: southerly on the road leading to Cambridge, eighteen rods and twenty-three links; then easterly on land of the heirs of Jonathan Ireland, thirty-eight rods and twelve links; then southerly on land of the heirs of Jonathan Ireland, eighteen rods and ten links; then southeasterly on land of Timothy Walker, twenty-two rods and nine links; then northeasterly on land late or now of Lamson, forty rods and eighteen links; then northwesterly on a range-way, thirty-five rods and sixteen links; then westerly on the same range-way, five rods and thirteen links; then southwesterly on land of the widow Stearns, six rods and nine links; then westerly on land of the widow Stearns, thirteen rods and twelve links; then southwesterly on land of Alexander Geddes, two rods and twenty links; then westerly on land of said Geddes, twenty rods and eighteen links, to Cambridge road aforesaid, with all the privileges and appurtenances to the same belonging—being the same, except a small part sold to said Geddes, which my father, Nehemiah Wyman, deceased, bought of Ward Nicholas Boylston, by deed recorded in Middlesex registry, book 163, page 433, and which Joseph Tufts, my father's administrator, sold to me by deed of this date:

To have and to hold the aforegranted premises, to the said Frances Wyman, his heirs and assigns, to his and their use and behoof forever. And I do covenant with the said Francis Wyman, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said Francis Wyman; and that I will warrant and defend the same premises to the said Francis Wyman, his heirs and assigns, forever, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said Nehemiah Wyman, his heirs, executors, or administrators, pay to the said Francis Wyman, his heirs, executors, administrators, or assigns, the sum of six hundred and seventy-six dollars in one month from this date, with interest semi-annually; and the sum of six hundred and fifty dollars in six months from this date, with interest semi-annually; and the sum of seven hundred and four dollars, 39-100, in one year from this date, with interest semi-annually; then this deed, as also three certain promissory notes, bearing even date with these presents, given by the said Nehemiah Wyman, to the said Francis Wyman, to pay the same sums, at the times aforesaid, shall be void; otherwise shall remain in full force.

In witness whereof, I, the said Nehemiah Wyman, together with Susan F. Wyman, wife of the said Nehemiah, in token of her relinquishment of dower in said premises, have hereunto set our hands

and seals, this first day of December, in the year of our Lord one thousand eight hundred and twenty.

NEHEMIAH WYMAN, and seal.
SUSAN F. WYMAN, and seal.

Signed, sealed, and delivered in presence of us,
WILLIAM S. PHIPPS,
BENJAMIN TEEL.

MIDDLESEX, ss.

December 1st, 1820. Then the above-named Nehemiah Wyman acknowledged the above instrument to be his free act and deed, before me,

J. TUFTS,
Justice of Peace.

MIDDLESEX, ss.

Cambridge, 2d December, 1820. Received and entered by
SAMUEL BARTLETT,
Register.

MIDDLESEX, ss.

January 18, 1830. I, Archibald Babcock, as trustee of the estate of Francis Wyman, the mortgagee within-named, have received full payment of the money due by this mortgage, and hereby discharge the same.

ARCHIBALD BABCOCK.

Witness: CALEB HAYDEN.

Cambridge, March 21, 1853. The foregoing is a true copy of the record, book 235, page 156.
Attest: CALEB HAYDEN,
Register.

(B & C.)

Francis Wyman's will and codicil.

[Certified copy.]

In the name of God, Amen. I, Francis Wyman, of Charlestown, in the county of Middlesex, merchant, being weak in body, but sound in mind and memory, do make and publish this, my last will and testament, in manner following, to wit:

I give, devise, and bequeath all the real estate of which I am now seized, and of which I shall be seized at the time of my decease, wherever situated, and all my personal estate of all kinds,

to Archibald Babcock, of said Charlestown, merchant, to hold the same to him and his heirs, to the use of him and his heirs, in trust, that he shall manage and improve the same to the best advantage, receive the rents and profits of the real estate, loan the said personal estate on mortgages at lawful interest, or purchase bank stock or other stock therewith at his discretion, or dispose of it in all or either of these ways, as to him may seem prudent, and receive the interest and income of the same, and in the further trusts hereinafter mentioned.

And my will is, that said trustee shall pay to my beloved wife, Susan Wyman, in quarterly payments, during the time she shall continue my widow, sole and unmarried, in lieu and stead of her dower in my estate, a sum equal to the third of the rents and profits of my real estate, and of the interest and income of my personal estate, quarterly; she from time to time receive a less sum, at her discretion, if, at any particular time she may think that she shall not need the whole sum. And if my wife shall marry again or die, my will is, that immediately from and after her second marriage or decease, the said third part of said rents and profits, interest, and income, shall belong to my two sons, Francis Wyman and Henry Nehemiah Wyman; or if one is dead at such time without lawful issue then living, then to the survivor of them; or if they be both then deceased without lawful issue then living, to the other persons hereinafter mentioned, who in this last case will take the rest of my personal estate hereinafter mentioned; and also said trustee is to place said third part at interest like the rest of my personal property; the said principal and interest of said third part to be paid by said trustee to my said two sons, or the survivor, or his or their issue; or in case of their decease without lawful issue then living, to said other persons hereinafter mentioned, in like manner as the rest of my personal estate hereinafter disposed of, that is, if my wife marries again or dies.

And further my will is, that said trustee shall from time to time, as occasion may require, pay to the guardian or guardians of my said two sons, for the use of my said two sons, such sums as may be sufficient for their support and education and other necessary charges and expenses, until my oldest son, Francis, shall come of age, and then said trustee is to continue to pay the necessary sums for the support of my youngest son, and for his education, till he comes of age, to his guardian; and to pay to my son Francis, from the time he comes of age till the twenty-second day of November, eighteen hundred and forty-two, a sum equal to one-third of the rents and profits of my real estate, and of the interest and income of my personal estate, quarterly, in quarterly payments. And at said last-mentioned time, my will is, that said trustee, if my wife is then living my widow and unmarried, shall take out of my personal estate such a sum as will produce an interest which, added to the rents and profits of my real estate, if they alone are not sufficient,

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will enable him therefrom to continue the quarterly payments to my wife of the one-third aforementioned to be paid to her; and having done this, the said trustee is to divide the rest of the personal estate into two equal parts, and to pay one of the said two equal parts to my son Francis, and the other to my son Henry Nehemiah. And if one of my two sons be then dead without lawful issue living at that time, then said trustee to pay both of said two equal parts to the survivor of my two sons. And if both of my sons shall have deceased before said twenty-second of November without lawful issue then living, my will is, that said trustee shall at that time pay, out of said two equal parts, to Benjamin Francis Adams, my nephew, son of Benjamin Adams, if my said nephew is then living, five hundred dollars, and to my wife, if then my widow and unmarried, and while she so continues, in addition to what I have before provided for her, on the same condition, the income of one-half of said two equal parts, first deducting from the whole said five hundred dollars from the whole of said two equal parts; and said trustee is to pay the income of the other half of said two equal parts, first deducting as aforesaid said five hundred dollars, in quarterly payments, in equal parts, to my mother and my aunt Lucy Wyman, or the survivor of them. But if my said nephew be then dead, said five hundred dollars is to go with said two equal parts. But if my wife shall at that time have married again or be dead, or whenever she may after that time marry again or die, my will is, that said trustee shall pay the said one-half of said two equal parts, in case my two sons be dead at that time without issue living at that time, in equal parts to my brothers and sisters, and those who may legally represent them, the children of such of my said brothers and sisters as may have died, to take their father's or mother's part.

And further, if my mother and my aunt Lucy Wyman shall then be dead, or whenever they may after that time both have deceased, said trustee is to pay the other said one-half of the two equal parts aforesaid in equal parts to my brothers and sisters, and those who may legally represent them, the children of such of my brothers and sisters as may have died, to take their father's or mother's part, both my sons being then dead without lawful issue then living.

And my will is, that the surplus of rents and profits, interest and income, shall from time to time be added by said trustee to the principal of my personal estate, be considered by him in every respect as belonging to the same, and be disposed of in the same manner.

And forasmuch as certain lands have been mortgaged to me, and other lands may hereafter be mortgaged to me; now if my executor shall take possession of such mortgaged lands, and the equity of redemption be foreclosed, I hereby direct, and my will is, that he shall be seized to the use of said trustee, in trust that he the

said trustee shall receive and dispose of the rents and profits thereof, and convey the same, at the same time and to the same persons, and in the same manner as the rest of my real estate; that is, he is to consider such land in every respect as part of my real estate.

And further my will is, that immediately from and after the second marriage or decease of my wife, said trustee is to hold the whole of my real estate in trust as follows: he is to receive the rents and profits thereof, to belong to my two children, or to the said other persons in case of both my sons' death without issue as aforesaid, and to be disposed of as above-mentioned; and on the twenty-second day of November, eighteen hundred and forty-two, or afterwards, if such a second marriage or decease of my wife does not happen till after that time, said trustee is, by a legal deed, to convey the said real estate to my said two sons and their heirs; and if one of my sons be then deceased without lawful issue living at the time such conveyance is herein directed to be made, said trustee is to convey the whole of my real estate to my son who may survive and to his heirs. And if both of my sons be dead without lawful issue living when such conveyance should be made, said trustee is to convey said real estate to my mother, if then living, to hold during her life—remainder in fee to my brothers and sisters and such as may legally represent them, the children living at that time of such of my brothers and sisters as may then be dead, to take their father's or mother's part. And if my mother shall then have deceased, the said trustee is to convey said real estate in fee to my brothers and sisters, and such as may legally represent them, the children living at that time of such of my brothers and sisters as may have deceased, to take their father's and mother's part. And if either or both of my children shall be dead, leaving lawful issue living, at any time when I have above-willed that said trustee shall convey said read or personal estate to my relations as above mentioned, my intention is by no means to disinherit such issue; but said trustee is to consider such issue in such event the same as his, her, or their father or fathers, and standing in the stead of the father or fathers, in every respect, and to convey the real and personal estate aforesaid to such issue, instead of the deceased father or fathers, and the same he is above directed to convey to the father or fathers, if living, and at the same time and in the same manner anything herein contained notwithstanding. But if such issue be then dead, it is to be the same as if such issue had never existed.

And I hereby direct that said trustee shall give bond to the judge of probate for said county, with two sufficient sureties, to be approved of by said judge, for the faithful performance of the several trusts aforesaid. And if any dispute should arise between persons interested in this will, relative to the intent and meaning of any part thereof, I recommend to the parties to refer it to such person learned in the law as said judge shall nominate to them.

And I hereby appoint the said Archibald Babcock to be sole executor of this my last will and testament, hereby revoking all former wills by me made.

In witness whereof, I have hereunto set my hand and seal this third day of May, in the year of our Lord eighteen hundred and twenty-two, and have signed duplicates.

FRANCIS WYMAN. [SEAL.]

Signed, sealed, published, and declared by the said testator to be his last will and testament, in the presence of us who have hereunto subscribed our names as witnesses, in the presence of the testator and of each other.

JOHN A. BATES,
HENRY TOLMAN,
FRANCIS MCKENNA.

I, Francis Wyman, of Charlestown, in the county of Middlesex, do make and publish this codicil to my last will and testament in manner following, viz: I give and devise to my beloved wife, Susan Wyman, in addition to what I have given her in my said last will, one undivided half of my house and land situate in said Charlestown, in Putnam street, leading from Salem turnpike to the Training field, to have and to hold the same to her during her natural life, without any condition whatever, and without impeachment of waste. I also give and bequeath to my said wife during her life, without any condition, and in addition to what I have given her in my last will aforesaid, the interest of one hundred dollars, to be paid to her annually, to the intent that she may have in any event some money to make repairs. And lastly, it is my desire that this my present codicil be annexed to and made a part of my last will and testament, to all intents and purposes.

In witness whereof, I have hereunto set my hand and seal this fourteenth day of June, in the year of our Lord eighteen hundred and twenty-two.

FRANCIS WYMAN. [SEAL.]

Signed, sealed, published, and declared by the said Francis Wyman to be a codicil to be annexed to his last will and testament, in the presence of us who have hereunto set our names in the presence of said Francis Wyman and of each other—the word "said" being first interlined.

WILLIAM S. PHIPPS,
OLIVE U. BROWN,
JOSEPH TUFTS.

I, Susan Wyman, widow of said testator, hereby certify that I have seen, examined the foregoing instrument, purporting to be the last will and testament of Francis Wyman, deceased, and codicil

thereto, and hereby consent that the same be proved and allowed. I also certify that all the children of said deceased are minors, and that they have no guardian.

SUSAN WYMAN.

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

[L. S.] At a Court of Probate, holden at Charlestown, in and for said county, on the twentieth day of August, in the year of our Lord one thousand eight hundred and twenty-two:

The foregoing instruments, purporting to be the last will and testament and codicil thereto of Francis Wyman, late of Charlestown, in said county of Middlesex, merchant, deceased, having been duly presented for probate to the Judge of said Court by Archibald Babcock, of said Charlestown, merchant, the executor therein named; and the heirs-at-law and legatees of said deceased, viz, the widow and minor children of said deceased, were notified of the time and place assigned for taking the same into consideration, and in writing consented to the probate thereof; and Francis McKenna and Joseph Tufts, two credible witnesses thereto, now appear before the Judge of said Court, and make oath that they saw the said Francis Wyman sign, seal, and heard pronounce, publish, and declare the said instruments to be his last will and testament and codicil, and that they, with John A. Bates, Henry Tolman, William S. Phipps, and Olive U. Brown, other credible witnesses then also present, who are now absent, at the same times attested the same instruments, and subscribed their names together, as witnesses, in the presence of the said testator, and at his request, and that he was then, according to the best of their discernment, of sane mind and sound and disposing memory. Whereupon, no objections being offered, and the evidence touching the premises maturely considered, and all needful inquiries made, it appears to the Judge of said Court that the said instrument is fully proved, and ought to be allowed as the last will and testament of said deceased. It is therefore decreed by the said Judge, that the same be approved, allowed, established, and recorded, and have full force and effect as such accordingly, and that the execution thereof be committed, and the administration of the estate of said deceased granted to the executor above named in manner and form by law in such case made and provided.

SAM'L P. P. FAY, *J. Prob.*

Countersigned: ISAAC FISKE, *Reg.*

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

The Hon. Samuel P. P. Fay, esq., Judge of the Court of Probate in and for said county, to all unto whom these presents shall [L. S.] come, greeting:

Whereas, by a decree passed by the honorable Judge of said Court, holden at Charlestown, in and for said county, on the twentieth day of August, A. D. 1822, the instrument hereunto annexed, purporting to be the last will and testament and codicil thereto of Francis Wyman, late of Charlestown, in said county, merchant, deceased, who had, while he lived, and at the time of decease, goods, chattels, rights, credits, or estate in said county, was proved, approved, and allowed, as the last will and testament of the said deceased, and to have full force and effect as such, and the execution thereof committed and the administration of the estate of said deceased granted to Archibald Babcock, the executor therein named.

Know ye, therefore, that the said S. P. P. Fay, esq., Judge as aforesaid, by virtue of the power and authority in him vested by the laws of the Commonwealth aforesaid, doth hereby accordingly commit the execution thereof, and grant the administration of the estate of said deceased, in all things the same concerning, whereof he died seized and possessed in said Commonwealth, unto Archibald Babcock, the executor named and appointed in the said will and codicil, well and faithfully to execute the same, and to administer the estate of said deceased according thereto, in all things pursuant to law; who has accepted of the said trust, and given bond, as the law directs, to return an inventory of the estate of said testator into the Probate office of said county within three months from the date hereof, and also to render a just and true account of his proceedings thereon, upon oath, when hereunto lawfully required.

In testimony whereof, the said Sam'l P. P. Fay, esq., Judge as aforesaid, hath hereunto set his hand and affixed his seal official, this fourth day of September, in the year of our Lord one thousand eight hundred and twenty-two.

SAM'L P. P. FAY, *J. Prob.*

Countersigned: ISAAC FISKE, *Reg.*

MIDDLESEX, *ss*:

At a Court of Probate now holden at Concord, within and for said county, on the fourth day of September, anno Domini 1822:

I hereby order Archibald Babcock, the executor of the last will and testament of Francis Wyman, late of Charlestown, in said county, merchant, deceased, to make known his appointment and acceptance of said trust, by posting notifications thereof in said town of Charlestown, and also by causing the same to be inserted three

weeks successively in the Boston newspaper, printed by Benjamin Russell, within three months from this day, and make return of his doings hereon to the Probate office, on oath, within seven months from the date hereof.

SAM'L P. P. FAY, *J. Prob.*

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

I, Alfred A. Prescott, Register of the Court of Probate, in and for the county of Middlesex aforesaid, hereby certify that the [L. S.] papers hereto annexed are true copies of papers on file in the Probate office in said county of Middlesex.

In witness whereof, I have hereunto set my hand and the seal of said Court, this nineteenth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

A. A. PRESCOTT, *Reg.*

[D.]

Nehemiah Wyman to James Foster.—Deed.

[Certified copy.]

Know all men by these presents, that I, Nehemiah Wyman, of Charlestown, in the county of Middlesex, and Commonwealth of Massachusetts, gentleman, in consideration of six hundred and nine dollars paid to me by James Foster, of Boston, in the county of Suffolk, and Commonwealth aforesaid, merchant, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey unto the said James Foster, his heirs and assigns, a certain lot of land situated in said Charlestown, and bounded as follows, viz: southwesterly on Cambridge road, there measuring sixty-six feet and four inches; southeasterly on land of the heirs of Jonathan Ireland, deceased, by a line beginning at Cambridge road, and running northeasterly, as the fence now stands, thirty-nine rods; then turning and running northwesterly five rods and eleven links on land of said Nehemiah Wyman: then turning and running southwesterly thirty-nine rods and twenty links, on land of said Nehemiah Wyman, to a marked post on Cambridge road, with all the privileges and appurtenances to said premises belonging:

To have and to hold the aforegranted premises, to the said James Foster, his heirs and assigns, to his and their use and behoof forever. And I, for myself and my heirs, executors, and administrators, do covenant with the said James Foster, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said James Foster; and

that I for myself and my heirs, executors, and administrators, will warrant and defend the same premises to the said James Foster, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Nehemiah Wyman, together with Susan F. Wyman, my wife, in token of her relinquishment of dower in said premises, have hereunto set our hands and seals, this first day of October, in the year of our Lord one thousand eight hundred and twenty-five.

NEHEMIAH WYMAN, and seal.
SUSAN F. WYMAN, and seal.

Signed, sealed, and delivered in the presence of us, (the word "first" being first erased, also the word "second," and the "first" again first inserted.)

MARSHALL JOHNSON,
JOSEPH TUFTS.
VALENTINE BAXTER, JR.

MIDDLESEX, ss.

February 15, 1826. Then the above-named Nehemiah Wyman acknowledged the above instrument to be his free act and deed, before me,

JOSEPH TUFTS,
Justice of Peace.

MIDDLESEX, ss.

February 15, 1826. Received and recorded by

WM. F. STONE,
Reg.

Cambridge, March 21, 1853. The foregoing is a true copy of record, book 264, page 412.

Attest: CALEB HAYDEN,
Reg.

(E.)

Archibald Babcock to James Foster. Deed of release.

[Certified copy.]

Know all men by these presents, that I, Archibald Babcock, of Charlestown, in the county of Middlesex, and Commonwealth of Massachusetts, merchant, in consideration of one dollar to me paid by James Foster, of Boston, in the county of Suffolk, and Commonwealth aforesaid, merchant, the receipt whereof I do hereby acknowledge, have remised, released, and forever quit-claimed, and

do for myself, and my heirs, by these presents, remise, release and forever quit-claim unto the said James Foster, his heirs and assigns, all my right and title to a certain lot of land situated in said Charlestown, and bounded as follows, viz: southwesterly on Cambridge road, there measuring sixty-six feet and four inches; southeasterly on land of the heirs of Jonathan Ireland, deceased, by a line beginning at Cambridge road and running northeasterly, as the fence now stands, thirty-nine rods; then turning and running northwesterly five rods and eleven links on land of said Nehemiah Wyman; then turning and running southwesterly thirty-nine rods and twenty links, on land of said Nehemiah Wyman, to a marked post on Cambridge road; with all the privileges and appurtenances to the said premises belonging:

To have and to hold the afore-mentioned premises, with all the privileges and appurtenances thereunto belonging, to him the said James Foster, his heirs and assigns, forever: so that neither I, the said *Abraham* Babcock, nor my heirs, or any other person or persons claiming from or under me or them, or in the name, right, or stead of me or them, shall or will, by any way or means, have, claim, or demand any right or title to the aforesaid premises or their appurtenances, or to any part or parcel thereof forever.

In witness whereof, I, the said Archibald Babcock, have hereunto set my hand and seal this first day of October, in the year of our Lord one thousand eight hundred and twenty-five.

ARCHIBALD BABCOCK, and seal.

Signed, sealed, and delivered in presence of us,
JOHN BARRET,
JOSEPH TUFTS.

MIDDLESEX, *ss:*

February 15th, 1826. Then the above-named Archibald Babcock acknowledged the above instrument to be his free act and deed, before me,

JOSEPH TUFTS,
Justice of the Peace.

MIDDLESEX, *ss:*

Feb'y 15, 1826. Received and recorded by

WILLIAM F. STONE,
Reg.

Cambridge, March 21, 1853. The foregoing is a true copy of record, book 264, page 411.

Attest:

CALEB HAYDEN,
Reg.

(F.)

Nehemiah Wyman to Archibald Babcock. Mortgage deed.

[Certified copy.]

Know all men by these presents, that I, Nehemiah Wyman, of Charlestown, in the county of Middlesex and Commonwealth of Massachusetts, gentleman, in consideration of twelve hundred dollars paid by Archibald Babcock, of said Charlestown, merchant, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey, unto the said Archibald Babcock, his heirs and assigns, a certain lot of land situated in said Charlestown, containing about eleven acres and an half, more or less, bounded southerly on the road leading to Cambridge about fourteen rods and twenty links; then easterly and southwesterly on land I sold to James Foster; then easterly on land of the heirs of Jonathan Ireland; then southerly on land of the heirs of Jonathan Ireland; then southeasterly on land of Timothy Walker; then northeasterly on land late or now of Mr. Lamson; then northwesterly on a range-way thirty-five rods and sixteen links; then westerly on the same range-way five rods and thirteen links; then southwesterly on land of the widow Stearns six rods and nine links; then westerly on land of the widow Stearns thirteen rods and twelve links; then southwesterly of Alexander Geddes two rods and twenty links; then westerly on land of said Geddes twenty rods and eighteen links, to Cambridge road aforesaid—being the same land I bought of Joseph Tufts, administrator, by deed recorded in the Middlesex Registry of Deeds, book 235, page 55, excepting about an acre at the southeasterly corner, which I sold to James Foster by deed dated the first day of October, A. D, 1825:

To have and to hold the afore-granted premises to the said Archibald Babcock, his heirs and assigns, to his and their use and behoof forever. And I do covenant with the said Archibald Babcock, his heirs and assigns, that I am lawfully seized in fee of the afore-granted premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said Archibald Babcock; and that I will warrant and defend the same premises to the said Archibald Babcock, his heirs and assigns forever, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said Nehemiah Wyman, his heirs, executors, or administrators pay to the said Archibald Babcock, his heirs, executors, administrators, or assigns, the sum of twelve hundred dollars in one year from this date, with interest, then this deed, as also a certain promissory note bearing even date with these presents, given by the said Nehemiah Wyman to the said Archibald Babcock, to pay the same sum to him, with interest, at the time aforesaid, shall both be void; otherwise shall remain in full force.

In witness whereof, I, the said Nehemiah Wyman, together with Susan F. Wyman, wife of the said Nehemiah Wyman, in token of her relinquishment of dower in said premises, have hereunto set our hands and seals, this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and twenty-six.

NATH'L WYMAN, and seal.
SUSAN F. WYMAN, and seal.

Signed, sealed, and delivered in presence of us,
JOSEPH TUFTS,
WILLIAM WYMAN.

MIDDLESEX, ss.

April 26, 1826. Then the above-named Nehemiah Wyman acknowledged the above instrument to be his free act and deed, before me,

JOSEPH TUFTS,
Justice of Peace.

MIDDLESEX, ss.

April 26, 1826, ten minutes past six o'clock p. m. Received and recorded by

WILLIAM F. STONE, *Reg.*

Cambridge, March 21, 1853. The foregoing is a true copy of record, book 267, page 135.

Attest: CALEB HAYDEN, *Reg.*

(G.)

Nehemiah Wyman to Archibald Babcock. Copy of deed.

[Certified by the Register of Deeds.]

Know all men by these presents, that I, Nehemiah Wyman, of Charlestown, in the county of Middlesex, and Commonwealth of Massachusetts, gentleman, in consideration of two thousand and thirty-three dollars and eighty-seven cents, to me paid by Archibald Babcock, of Charlestown, in the county and Commonwealth aforesaid, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Archibald Babcock, his heirs and assigns, a certain lot or parcel of land, situate in said Charlestown, containing eleven acres and one-half of an acre, more or less, and bounded as follows, viz: southerly on the road leading to Cambridge, fourteen rods and twenty-three links; then easterly on land of the late James Foster, and being the same land sold to said Foster by Nehemiah Wyman, thirty-nine rods and twenty links; then southerly on land of said Foster, five rods

and eleven links, and on land of the heirs of Jonathan Ireland, eighteen rods and ten links; then southeasterly on land of Timothy Walker, twenty-two rods and nine links; then northeasterly on land late or now of Lamson or Elliott, forty rods and eighteen links; then northwesterly on a range-way, thirty-five rods and sixteen links; then westerly on the same range-way, five rods and thirteen links; then southwesterly on land formerly of the widow Stearns, six rods and nine links; thence westerly on land of the widow Stearns, thirteen rods and twelve links; then southwesterly on land of Alexander Geddes, two rods and twenty links; then westerly on said land of said Geddes, twenty rods and eighteen links, to Cambridge road aforesaid—being the same land which the said Wyman purchased of Joseph Tufts, administrator of his father's estate, as will appear by deed bearing date December first, A. D. eighteen hundred and twenty, and recorded in the Registry of Deeds, book 235, page 155, excepting one acre sold to James Foster by said Wyman, as will appear by deed bearing date October 1st, A. D. eighteen hundred and twenty-five, and recorded in the Registry of Deeds, book 264, page 412, reference thereto will more fully appear:

To have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said Archibald Babcock, his heirs and assigns, to his and their use and behoof forever. And I, the said Nehemiah Wyman, for myself and my heirs, executors, and administrators, do covenant with the said Archibald Babcock, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said Archibald Babcock, his heirs and assigns, as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said Archibald Babcock, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Nehemiah Wyman, together with Susan F. Wyman, my wife, in token of her relinquishment of right of dower in said premises, have hereunto set our hands and seals this twentieth day of November, in the year of our Lord eighteen hundred and twenty-eight.

NEHEMIAH WYMAN, and seal.
SUSAN F. WYMAN, and seal.

Executed and delivered in presence of us,
LUCY S. ROWLAND,
NANCY THOMPSON,
WILLIAM WYMAN.

COMMONWEALTH OF MASSACHUSETTS.

November 20th, A. D. 1828. Then personally appeared the

above-named Nehemiah Wyman, and acknowledged the above instrument to be his free act and deed, before me,

HENRY GARDNER,
Justice of the Peace.

MIDDLESEX, *ss:*
November 21st, 1828. Received and recorded by
WM. F. STONE, *Reg.*

The foregoing is a true copy of record, book 284, page 461.
Attest: CALEB HAYDEN, *Reg.*

And thence the same was continued from term to term unto the October term, 1853, when, to wit, November 5th, 1853, the following amendment to said bill was, by leave of Court and by consent of parties, filed in the cause, viz:

Amendment inserted in the stating part of the bill in said cause by agreement and order of Court thereon.

That said Archibald D. Babcock, at one time, and within two years past, in substance promised said William Wyman, the brother of said Nehemiah, acting in behalf of or for the benefit of the said Nehemiah, that he would come to an account with said Nehemiah for the price received by him for said land, with interest, and deducting therefrom the debts aforesaid due to him individually, and in his said capacities pay over to said Nehemiah the balance, provided said Nehemiah would indulge him in the time of payment by taking his note at long time, and that he would refer the question of how much rents and profits of said land he should pay to the said Nehemiah to the arbitrament of their neighbors; and that the said Archibald hath frequently and within a short time previous to the filing of this bill admitted, in substance, that it was originally agreed that said deed should stand as security only for the amount of said debts set forth in said memorandum, drawn up as aforesaid, and delivered to said Nehemiah, and that he always intended to do right in the matter, but that he had been advised by counsel that said agreement could not be enforced against him because not in writing, and therefore refused to proceed further in the matter.

And on the 14th day of October, 1853, the answer of the respondent was filed in the clerk's office, and is in the words and figures following, to wit:

To the Judges of the Circuit Court of the United States, for the District of Massachusetts.

The answer of Archibald Babcock to the bill of complaint of Edward Wyman.

This defendant, for answer unto so much of the said bill as he is

advised it is material for him to make answer, says that it is true that on the twentieth day of November, in the year eighteen hundred and twenty-eight, the said Nehemiah Wyman by deed conveyed to this defendant a tract of land, situate in said Charlestown, and described in the schedule (G) annexed to said bill, to be held by this defendant, his heirs and assigns, to their sole use. That said tract of land was then subject to divers mortgages, made by deeds recorded, the particulars of which this defendant believes to be correctly set forth in said bill of complaint.

This defendant further says that the consideration money expressed in said deed was the amount then due to this defendant in his own right, and as executor and trustee, and of the further sums of eight 10-100 dollars, owed to this defendant, and fifty dollars owed to him as agent for the heirs, for which he held no security, and that no additional consideration money was then paid.

The defendant further says that the said tract of land was not then worth more than the sum of *nineteen* hundred dollars, and could not have been sold for enough to pay the same. That this defendant, at the urgent solicitation of the said Nehemiah, consented to accept said conveyance in payment of the sums of money due to him personally, and upon the agreement that if he should be able to realize therefrom in addition enough to pay the sums due to him as executor and trustee, he would pay the same, and upon no other agreement, trust, or confidence whatsoever.

This defendant further says that upon the delivery to him of the said deed, he cancelled the notes of said Nehemiah Wyman, held in his own right, and either surrendered them to him or destroyed them, but that he did not cancel or surrender the notes held by him as executor and trustee, because he was not satisfied that he should realize enough of the said land to pay the same, and that in order to prevent any presumption that he had so agreed absolutely, he made a minute thereon to the effect that he did not guarantee payment thereof; it being the understanding and agreement between him and the said Nehemiah, that if enough was not realized out of said land to pay the whole of said debts, the said Nehemiah should be personally liable therefor, and that this defendant should if possible, realize enough to pay the same, and should, not be under any liability to account with the said Nehemiah for his doings relating thereto.

This defendant further says that he made no other agreement with the said Nehemiah than that above set forth, and denies that it was ever understood or agreed between them that the said land was conveyed to him upon the trust set forth in said bill, or on any other trust or trusts, but insists that the conveyance thereof was absolute and in payment of the sums of money then due or owing to this defendant from said Nehemiah, and liabilities incurred on his account, and that the only understanding was that if this defendant should realize therefrom enough to pay his own claims,

and there should be surplus, he would pay the debts due and owing to this defendant, as executor and trustee from said Nehemiah.

This defendant further says that if any trust was created by said conveyance and understanding, which he does not admit but denies, it was one for the benefit of the parties interested in the estates held by this defendant as executor and trustee, and not for the benefit of said Nehemiah.

This defendant further says that immediately upon the delivery of said deed he took possession of said land; that the said Nehemiah continued to live in said Charlestown for about eight years afterwards, this defendant continuing all the time in possession; and afterwards said Nehemiah, in the year 1836, removed to the State of Illinois, but in the year 1840 he visited Charlestown, and frequently saw this defendant, but never disturbed said possession, or call for an account of the rents and profits of said land, or of the proceeds thereof, or ever claimed or pretended to have any claim thereto.

This defendant further says that he has no knowledge respecting any deed or assignment made by the said Nehemiah to the complainant, nor of the consideration of any paid therefor, and prays that the plaintiff may be held to prove the same, if by him deemed material.

This defendant further denies that he has at any time admitted to William Wyman, or any other person, that it was originally agreed that said deed should stand as security for the amount of the debts set forth in said memorandum, or made any admission or statement of the kind or to that effect, or stated that he had been advised by counsel that said pretended agreement could not be enforced because not in writing.

This defendant further denies that within two years, or at any time, did he agree with said William Wyman to come to an account with said Nehemiah for the price secured by him for the land, and pay him the balance on condition of indulgence in time of payment, or that he made any agreement of any such nature or effect, or that he has made any agreement with said William within the said time, or ever informed him that he had consulted counsel or been advised by counsel in relation thereto.

This defendant admits that upon the execution of said deed he entered upon said estate as his own property, and continued to remain in undisturbed possession, as sole and absolute owner thereof until he sold the same in the year eighteen hundred and forty-four; but he denies that he is liable to render any account to the complainant of and concerning the rents, profits, and charges thereof, and the proceeds of sales, and declines to furnish any such account until this Court shall decree that he is bound so to do.

This defendant admits that he gave no notice of any sale or sales to said Nehemiah, or any one in his behalf, not apprehending that he

had any interest in said estate or the sale and disposal thereof, and for the same reason did not disclose to the purchasers thereof that the said Nehemiah had any right or interest therein.

This defendant further says that the said deed of conveyance made and delivered to him by the said Nehemiah purports to be and was made for a valuable consideration; that it conveyed the said land to the defendant in simple-fee, to his sole use, and not upon any trust or to the use of any other person; that said deed contains covenants of warranty of title against the said Nehemiah and all persons claiming under him; that it does not appear and is not alleged in said bill, and is not true, that any memorandum or agreement in writing relating thereto, or to any trust concerning the same, was ever made or signed by this defendant, as is required by the laws of the State of Massachusetts in order to create a trust, and that the said Nehemiah, and all persons claiming under him, are estopped by said covenants from pretending to have any title to said land or the proceeds thereof; and this defendant claims the same benefit of this defence as if made by plea or demurrer.

And this defendant further says, that it appears on the face of said bill, and is true, that said conveyance was made to this defendant in the year eighteen hundred and twenty-eight, more than twenty years ago, and that his possession thereof, and that of those claiming under him, has never been disturbed to this time; and that it is also charged in said bill, and is true, that said defendant sold the same in the year eighteen hundred forty-five, and received the proceeds more than six years ago; and that if said Nehemiah or his said assignee ever had any claims against this defendant, at law and in equity, or any right or title to the said lands or the proceeds thereof, by reason of the premises, which this defendant does not admit, but wholly denies, the same are barred by the statutes of limitations of the said State of Massachusetts; and this defendant prays to have the same benefit of this defence as if taken by way of plea or demurrer.

And this defendant denies that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

A. BABCOCK.
C. G., F. C., & C. W. LORING,
Of Counsel.

CIRCUIT COURT UNITED STATES,
Massachusetts District.

October 14, 1853. Personally appeared the above-named A. Babcock, and made oath that the statements made in the foregoing answer by him signed, so far as made on his personal knowledge, are true, and so far as made on information and belief he believes them to be true.

Before me.

H. W. FULLER, *Clerk.*

And thereafter, to wit, November 17th, 1853, the following exceptions to the answer of the respondent was filed in the clerk's office, to wit:

Exceptions taken to the answer of Archibald Babcock, defendant, to the bill of complaint of Edward Wyman against the said Archibald Babcock.

First exception. For that the said Archibald Babcock hath not answered to the best of his knowledge, information, and belief, what rents and profits said profits alleged in said bill to consist of grass, sand, clay, and copestone—he received from the estate named in said bill between the 20th day of November, 1828, when he took possession of said estate under the deed of that date, executed by Nehemiah Wyman to him, and his sale of said estate in the year 1844; and because in his said answer he hath not set forth an account of said rents and profits, year by year, as the same were by him enjoyed or received, with the particular items and amounts thereof during said period time.

Second exception. For that the said Archibald Babcock hath not answered—in what parcels and at what prices he sold the estate named in said bill, and how much and at what times he received the purchase-money thereof, and what application he hath made of said purchase-money, and whether he hath paid over the whole of the same or how much of the same to the heirs of Francis Wyman, and how much, if any, to the heirs of Nehemiah Wyman, the elder, and how much of said purchase-money he hath retained himself, and hath not set forth in detail a particular account of the sums, if any, by him paid over to others, and the sum or sums by him retained to his own use; and hath not answered and set forth whether he has paid over any of said purchase-money to his brother-in-law, Nehemiah Wyman, the younger, and if he hath paid over any, how much, and in what sum or sums, in what manner, at what time or times.

In all which particulars the complainant excepts against the defendant's answer as imperfect, irrelevant, and insufficient, and therefore prays that the said defendant may put in a better and further answer thereto.

SIDNEY BARTLETT,
SAM'L AMES,
Solicitors for Claimant.

And on the 13th day of April, A. D. 1854, the following additional answer of the respondent was filed in the clerk's office, to wit:

And the defendant further answering, says, that he is unable to state what were the rents and profits of said land in said bill described, and consisting of grass, sand, and copestone, nor can he set forth an account of said rents and profits, year by year, as they were enjoyed by him, with the particular items and amounts thereof, during said period of time; that he always used and appropriated said rents and profits, whatever they were, to his own use, and kept no account thereof, because said land was his own, and the rents and profits thereof were his own without any liability to account with any one therefor, and without any demand from or by any person to account therefor.

He farther says, that to the best of his knowledge and belief the expense of fencing said land, after he became seized thereof, and the expense of filling up the sand-pits and excavations that had been made therein before he became seized of said land, and levelling end grading the same, together with the expense of opening a new ledge therein, amounted to as much if not to a larger sum than the whole amount of rents and profits aforesaid derived from said land.

And the defendant farther says, that he sold all of said land on the third day of October, A. D. 1844, to Gustavus V. Hall and Charles Pierce, for seven thousand two hundred and fifty dollars, in two parcels, as follows, namely: he sold the lower lot, consisting of about four acres, to said Hall for the sum of two thousand dollars, and the said Hall paid the said sum in money at the time of the sale; that the consideration as named in the conveyance to said Hall was two thousand eight hundred dollars, but that the real consideration for said sale was the sum of two thousand dollars only. He sold the upper lot to said Charles Pierce for the sum of five thousand two hundred and fifty dollars. No part of said sum was paid at the time, but the whole was secured to him by a mortgage of the premises from said Pierce to him, and he received the pay therefor, to the best of his information and belief, as follows, namely:

On the 15th day of April, A. D. 1845,	$1,805 00
On the fifth day of October, A. D. 1845,	1,055 00
On the tenth day of December, A. D. 1845,	100 00
On the eleventh day of February, A. D. 1846,	150 00
On the twenty-fifth day of February, A. D. 1846,	10 00
On the nineteeth day of March, A. D. 1846,	150 00
On the eighth day of July, A. D. 1846,	100 00
On the ninth day of October, A. D. 1846,	50 00
On the twenty-fourth day of November, A. D. 1846,	5 00
On the twenty-eighth day of November, A. D. 1846,	229 00
On the fourteenth day of May, A. D. 1847,	202 50

On the seventh day of June, A. D. 1847,	300 00
On the twenty-sixth day of August, A. D. 1847,	200 00
On the twenty-first day of October, A. D. 1847,	200 00
On the eighteenth day of November, A. D. 1847,	200 00
On the twenty-eighth day of April, A. D. 1848,	200 00
On the sixth day of July, A. D. 1850,	100 00
On the twenty-fourth day of May, A. D. 1851,	576 80
	$5,632 80

And said payments amounted in the whole to the sum of five thousand six hundred and thirty-two dollars and eighty cents, as far as he is able to state, and that he paid one hundred dollars to a broker for effecting said sales.

And this defendant further says, that he paid no part of said money to Nehemiah Wyman the elder, or to Nehemiah Wyman the younger, and there was no reason why he should pay any part of it to either of them. He says, however, that being a trustee of the estate belonging to the heirs of Francis Wyman, and having invested a large part of said estate in the stock of the Phœnix Bank, in his own name, a bank doing business at said Charlestown, he was by the failure of said bank under the necessity of raising the amount due from him to said heirs by the sale of his own property, and that he sold said land on account of said necessities, and because he thought it the most prudent course for him to pursue. He further says, that he paid the two thousand dollars by him received of said Hall as aforesaid to said heirs on account of his liability to said heirs as their trustee as aforesaid, and not on account of any right they had to said land, or the proceeds thereof; and that he used all of said money paid to him as aforesaid as his own money, as he had a right to do. He is unable, however, to state what part of the other of said payments he applied towards his indebtedness to said heirs as aforesaid; but he was indebted to said heirs, as their trustee, to a larger amount than all the proceeds of said land; and he paid them a larger amount than the amount of said proceeds.

A. BABCOCK.
BENJ. DEAN,
Of Counsel.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

April 1st, A. D. 1854. Personally appeared the above-named A. Babcock, and made oath that the statements made in the foregoing answer, by him signed, so far as made on his personal knowledge, are true, and so far as made on information and belief he believes them to be true.

Before me,

H. W. FULLER, *Clerk.*

And on the 13th day of May, 1854, the following replication was filed by the complainant, to wit:

The replication of Edward Wyman, complainant, to the answer of Archibald Babcock, defendant.

The repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto, saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer is very uncertain, evasive and insufficient in law to be replied unto by the repliant. Without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable Court shall direct, and humbly prays, as in and by his bill he has already prayed, by

SAMUEL AMES,
His Solicitor.

This cause was thence continued to the October term, 1854, of this Court, when a hearing was had, and was thence continued to the May term, A. D. 1855, when the same was referred to a master to ascertain the value of the land and of the rents and profits thereof, and to state the accounts between said parties and the balance thereof, under the direction of the Court. And the said master thereafter made his report thereon; which report, after amendment, by consent, was accepted by the Court. But the said order of reference, and the report of the master, and the interloctury orders and proceedings relating thereto, are now, by consent of the parties, and by leave of Court, merely referred to and not extended upon the record. From the said May term this cause was continued to this present term, when the following *final decree* was made therein, to wit:

This case having been heard on the bill of complaint filed therein, and upon the answer of the defendants thereto, and upon the proof exhibited by the respective parties, and the parties having been heard by their counsel, this Court doth declare the conveyance of Nehemiah Wyman to said defendant, bearing date the twentieth day of November, in the year one thousand eight hundred and twenty-eight, to have been a mortgage to secure the debts, the amount whereof is named in said deed, as the consideration of the same; and that, at the times of the sales of the lands in said conveyance set forth by the defendant, the assignor of the complainant had the right to redeem the same; and doth declare that the absolute sales

On the seventh day of June, A. D. 1847,	300 00
On the twenty-sixth day of August, A. D. 1847,	200 00
On the twenty-first day of October, A. D. 1847,	200 00
On the eighteenth day of November, A. D. 1847,	200 00
On the twenty-eighth day of April, A. D. 1848,	200 00
On the sixth day of July, A. D. 1850,	100 00
On the twenty-fourth day of May, A. D. 1851,	576 80
	$5,632 80

And said payments amounted in the whole to the sum of five thousand six hundred and thirty-two dollars and eighty cents, as far as he is able to state, and that he paid one hundred dollars to a broker for effecting said sales.

And this defendant further says, that he paid no part of said money to Nehemiah Wyman the elder, or to Nehemiah Wyman the younger, and there was no reason why he should pay any part of it to either of them. He says, however, that being a trustee of the estate belonging to the heirs of Francis Wyman, and having invested a large part of said estate in the stock of the Phœnix Bank, in his own name, a bank doing business at said Charlestown, he was by the failure of said bank under the necessity of raising the amount due from him to said heirs by the sale of his own property, and that he sold said land on account of said necessities, and because he thought it the most prudent course for him to pursue. He further says, that he paid the two thousand dollars by him received of said Hall as aforesaid to said heirs on account of his liability to said heirs as their trustee as aforesaid, and not on account of any right they had to said land, or the proceeds thereof; and that he used all of said money paid to him as aforesaid as his own money, as he had a right to do. He is unable, however, to state what part of the other of said payments he applied towards his indebtedness to said heirs as aforesaid; but he was indebted to said heirs, as their trustee, to a larger amount than all the proceeds of said land; and he paid them a larger amount than the amount of said proceeds.

A. BABCOCK.
BENJ. DEAN,
Of Counsel.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

April 1st, A. D. 1854. Personally appeared the above-named A. Babcock, and made oath that the statements made in the foregoing answer, by him signed, so far as made on his personal knowledge, are true, and so far as made on information and belief he believes them to be true.

Before me,

H. W. FULLER, *Clerk.*

And on the 13th day of May, 1854, the following replication was filed by the complainant, to wit:

The replication of Edward Wyman, complainant, to the answer of Archibald Babcock, defendant.

The repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto, saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer is very uncertain, evasive and insufficient in law to be replied unto by the repliant. Without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable Court shall direct, and humbly prays, as in and by his bill he has already prayed, by

SAMUEL AMES,
His Solicitor.

This cause was thence continued to the October term, 1854, of this Court, when a hearing was had, and was thence continued to the May term, A. D. 1855, when the same was referred to a master to ascertain the value of the land and of the rents and profits thereof, and to state the accounts between said parties and the balance thereof, under the direction of the Court. And the said master thereafter made his report thereon; which report, after amendment, by consent, was accepted by the Court. But the said order of reference, and the report of the master, and the interloctury orders and proceedings relating thereto, are now, by consent of the parties, and by leave of Court, merely referred to and not extended upon the record. From the said May term this cause was continued to this present term, when the following *final decree* was made therein, to wit:

This case having been heard on the bill of complaint filed therein, and upon the answer of the defendants thereto, and upon the proof exhibited by the respective parties, and the parties having been heard by their counsel, this Court doth declare the conveyance of Nehemiah Wyman to said defendant, bearing date the twentieth day of November, in the year one thousand eight hundred and twenty-eight, to have been a mortgage to secure the debts, the amount whereof is named in said deed, as the consideration of the same; and that, at the times of the sales of the lands in said conveyance set forth by the defendant, the assignor of the complainant had the right to redeem the same; and doth declare that the absolute sales

and conveyances by defendant of said land to bona fide purchasers for valuable consideration, without notice, was a constructive fraud upon the rights of the assignor of complainant, and that, therefore, he became entitled as against the defendant personally to an account of the value of the land and of the rents and profits thereof, and, after deducting the amount of principal and interest due said defendant, to the payment of the balance; and doth declare that the complainant, as assignee, has succeeded to those rights.

And said cause having been referred to a master to take the necessary accounts, in pursuance of the foregoing declaration of this Court, and said master having made his report in the premises, and the same being duly considered and the respective parties heard therein, this Court doth order and decree that there be paid by said defendant to said complainant the sum of twelve thousand and sixty-seven dollars and nine cents, together with costs taxed at four hundred and sixty-nine dollars and seventy-four cents. Whereupon the said Babcock then and there claimed an appeal to the Supreme Court of the United States, to be holden at Washington, in the first Monday of December next; and gave good and sufficient security to prosecute his appeal with effect, and to answer all damages and costs if he shall fail to make good his appeal, which security was approved by the Court, and the said appeal allowed accordingly.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, Henry W. Fuller, clerk of the Circuit Court of the United States for the first circuit, Mass. Dis't, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Edward Wyman, in equity, versus Archibald Babcock in said Court.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said Court, at Boston, in said district, this sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

[SEAL.]

H. W. FULLER,
Clerk Cir. C. U. S. Mass. Dist.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a Circuit Court of the United States for the first circuit, begun and holden at Boston, within and for the District of Massachusetts, on Monday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, before the Hon-

orable Benj. R. Curtis, associate justice, and the honorable Peleg Sprague, district judge—

In Equity,

EDWARD WYMAN
versus
ARCHIBALD BABCOCK,

Defts. objections to interrogatories.

The defendant objects to all interrogatories asked by the plaintiff of Nehemiah Wyman as incompetent, because asking for oral declaration for the purpose of altering, adding to, and explaining written instruments, and he put his own cross-interrogatories relating thereto, *de bene esse.*

To the 13th of said plaintiff's interrogatories, as otherwise incompetent.

BENJ. DEAN,
Def'ts Solicitor.

Exhibit "X," referred to in the ninth cross-interrogatory to Nehemiah Wyman.

Whereas, Nehemiah Wyman has this day given me his note for twelve hundred dollars, secured by a mortgage payable in one year and of this date:—Now, therefore, in consideration thereof, I promise the said Wyman, that whenever he shall have paid me all moneys I have already advanced to him, or may advance to or for him, and all book accounts and demands I now have or may have against him, I will then deliver to him said note to be cancelled, and will also discharge said mortgage.

ARCHIBALD BABCOCK.

Charlestown, April 26th, 1826.

IN THE UNITED STATES CIRCUIT COURT,
Massachusetts District:

EDWARD WYMAN
versus
ARCHIBALD BABCOCK.

By virtue of the annexed commission, &c., it is agreed that the commission attached to the depositions in the above-entitled cause, and also the interrogatories, where the same are repeated by the magistrate in the deposition, need not be printed.

SIDNEY BARTLETT, JR., *Solicitor.*
BENJ. DEAN, *Solicitor for Def't.*

The deposition of Nehemiah Wyman and Alexander Leitch.

The deposition of Nehemiah Wyman and Alexander Leitch, taken before me, Charles H. Tillson, a notary public within and for the county of St. Louis, and State of Missouri, and a magistrate authorized to take depositions at Saint Louis, in the District of Missouri, at the office of Tillson & Shands, in the city of Saint Louis, District of Missouri, on the sixth day of October, A. D. eighteen hundred and fifty-four, between the rising and setting of the sun, to be read as evidence in a certain suit depending in the Circuit Court of the United States within and for the Massachusetts District, holden at Boston, wherein Edward Wyman is plaintiff, and Archibald Babcock is defendant.

Nehemiah Wyman. The said deponent, being first carefully examined and cautioned, and sworn to tell the whole truth, doth depose and say that he lives a greater distance from said Boston than one hundred miles; and he further deposes, says, and answers to the several interrogatories contained in said commission, as follows:

Int. 1st. What is your name, age, and place of residence?

Ans. My name is Nehemiah Wyman; I was sixty-eight years old last February; I reside in the city of Saint Louis, and State of Missouri.

Int. 2d. How are you related to or connected with the plaintiff, and how to or with the defendant in this cause?

Ans. The plaintiff is my son. The defendant married a sister of mine.

Int. 3d. In what business were you engaged in the year 1825 and 1826, and where? and what became your condition as to being indebted in the year 1826 to the estate of your brother Francis Wyman, and what was your condition in this respect in the year 1828, at the time you conveyed your estate in Charlestown to Archibald Babcock, as to indebtedness to said estate; whether or not had you paid any interest to said estate within any and how many years?

Ans. In the year 1825 and 1826 I was in the provision business, in Quincy market, Boston, Massachusetts. In the year 1826 I owed the estate of Francis Wyman two notes—one of six hundred and fifty dollars, and the other of six hundred and seventy-six dollars, making in all $1,326. In the year 1828, at the time I conveyed my estate in Charlestown to Archibald Babcock, I owed the estate of Francis Wyman fourteen hundred eighty-seven dollars and thirty-two cents, being the principal and interest compounded on said notes. I paid interest to said estate up to the year eighteen hundred and twenty-six from the year eighteen hundred and twenty.

Int. 4th. In what amount were you indebted at the time of said conveyance to said Archibald Babcock, in his capacities of trustee under the will of Francis Wyman, as agent of the heirs of your

father, N. Wyman, senior, for the collection of the rents of their estate improved by you, and as an individual? State, as nearly as you can, and the sum of the whole.

Ans. At the time of said conveyance to said Archibald Babcock, I was indebted to him in his capacity of trustee, under the will of Francis Wyman, fourteen hundred and eighty-seven dollars and thirty-two cents. I owed him as agent of the heirs of my father one hundred and thirty-six dollars and seventy-one cents, fifty dollars of which was in a note by itself, and the balance of eighty-six dollars and seventy-one cents was included in another note of four hundred and eighty-six dollars and seventy-nine cents. I owed him as an individual four hundred dollars and eight cents, which was a part of the note of $486 79 last mentioned, and I also owed him a note of eight dollars and ten cents. The sum of the whole by a memorandum made at the time, was:

Notes to Francis Wyman, and interest.....	$1,487 32
Note of $486 79, and 13 day's interest.....	487 83
Note of $50.....	50 00
Note of $810.....	810 00
	$2,032 25
To which was added 62, claimed for recording.....	62
	$2,033 87

Int. 5th. What amount, if any, was advanced by the said Archibald to you, upon the execution of the note and mortgage for 1200 dollars, dated April 26th, 1826? And what amount, if any, upon the security of the same, between said date and the date of your subsequent conveyance to him on the 20th day of November, 1828?

Ans. Nothing was advanced by said Archibald to me upon the execution of the note and mortgage for 1200 dollars, dated April 26th, 1826. Upon the security of the same, between said date and the date of my subsequent conveyance to him, on the 20th day of November, 1828, he advanced to me four hundred and eight dollars and eighteen cents in all—$400 08 of which I owed him as an individual, and $8 10 of which was the note before alluded to. The $400 08 was a part of the note of $486 79.

Int. 6th. What contract or agreement, verbal or written, was entered into between yourself and the said Archibald Babcock as to the conveyance of your estate in Charlestown to him on the 20th day of November, 1828? What was the intent and purpose of said conveyance, and what reason, if any existed, for adopting the form of a clear deed instead of a mortgage to carry out said purpose and intent?

Ans. It was expressly understood that I was to have the land again at any time on paying the several amounts for which I con-

veyed it. The intent and purpose of the conveyance was to give security for the payment of the notes, as also to give Mr. Babcock the entire management of the land, so as to insure an application of the proceeds to a prompt payment of the interest of the notes he held against me. The principal reason for adopting the form of a clear deed instead of a mortgage was because Mr. Babcock so insisted; because, as he seemed to anticipate future embarrassments in my business affairs, he did not wish any liability to interruption in the management of the land.

Int. 7th. Had you or not occupied or enjoyed the estate conveyed by you to said Babcock, Nov. 20th, 1828—for how long—up to what time? Was it or not your patrimonial estate?

Ans. I had occupied and enjoyed such estate seven or eight years, and up to the time of said conveyance it was my patrimonial estate.

Int. 8th. Did you make said conveyance willingly or reluctantly? Were you or not urged or pressed so to do by any person or persons and by whom?

Ans. I made said conveyance very reluctantly; I was urged to do it by my brother, William Wyman, and also by Mr. Babcock, nearly two weeks before I consented to do it; my brother William said if I did not do it he would not assist me pecuniarily.

Int. 9th. What was the pecuniary condition of the children and devisees of your brother Francis Wyman? And was it or not such that the payment of the interest on your debt to said estate was important or of no importance to their support?

Ans. It was important and necessary, and they depended upon it as one of the means of their support; their pecuniary condition rendered them dependent.

Int. 10th. What rights were reserved by you, if any, under such agreement, as to the redemption of said estate, and what obligations, if any, did said Archibald take upon himself as to the application of the rents and profits which he might receive from it?

Ans. I reserved the right to redeem the land, for the consideration in the deed, at any time in the future I might be able to do it, and this was well understood by all the persons present at the transaction. Mr. Babcock obligated himself to keep an account of all receipts and expenditures on account of the land, and, after paying expenditures and interest on the notes out of the proceeds of the use of the land, to apply the balance, if any, towards the liquidation of the debt.

Int. 11th. Was any reckoning had at the time of said conveyance of the amount due from you to him in his various capacities, and personally, and was any statement of the same prepared, and if so, in whose handwriting was it, by whose direction made, and to whom and for what purpose delivered? Will you produce any such reckoning if you have it; if not, in whose hands is it, and annex a copy?

Ans. There was such reckoning had, and a statement of the same was prepared; it was in the handwriting of Archibald Dorrance Babcock, son of Archibald Babcock, and was made by direction of Mr. Babcock, his father, and delivered to me to show the amount of my indebtedness to him, and the sum I would have to raise to redeem the land. The last I knew of the original statement it was in the hands of my brother, William Wyman, but I have a copy of it, and I annex it hereto, marked "Exhibit A," and make it a part of my deposition.

Int. 12th. At the time of the execution of said conveyance, were any notes or obligations held by Archibald Babcock against you cancelled, or delivered up to you, or agreed so to be, or did he continue to hold the same against you undischarged in the same manner after as before said conveyance?

Ans. No notes or obligations held by Archibald Babcock against me were cancelled or delivered up to me, nor agreed to be, at the time of the execution of said conveyance, but he continued to hold the same and still holds them against me undischarged. I have never seen them since.

Int. 13th. What was the value of said estate at the time of said conveyance in comparison with the amount for which it was conveyed by you to said Babcock as security? Had you previously sold part of it, and at what rate, and how did the part sold compare in value per acre with the residue? What inducements were held out to you, if any, by said Babcock, or your brother William, to induce you to convey the same to said Babcock?

Ans. The estate was worth three times the value of the amount for which it was conveyed to secure. I had previously sold one acre at the rate of six hundred dollars an acre; the part I sold was of about an average value with the rest. Mr. Babcock and my brother William said if I would make the conveyance to Mr. Babcock, that they would assist me in my pecuniary difficulties, and if I did not, that they would not assist me.

Int. 14th. Where did you go with your family after executing said conveyance; and what was and has been since your condition as to property?

Ans. I remained in Charlestown until September 8th, 1835, at which time I removed to the State of Illinois. My condition as to property at the time of said conveyance was embarrassed; I was poor, and have never been able since to redeem the property.

Int. 15th. Had you any notice of said Babcock's design to sell said estate; and at what time did you first know of his design to sell the same, or of his sale of the same; state particularly and from whom you received notice?

Ans. I had no notice of Babcock's design to sell said estate; I first knew of his design to sell from a letter I received from my brother William, dated July 9th, 1851, previous to which time I

did not know that he had sold or intended to sell; I did not know that he designed to sell until I learned that he had sold said estate.

Int. 16th. What communication, if any, have you had with said Babcock in relation to your rights in said estate; and through whom, if anybody, were said communications made? and what has prevented you, if anything, from prosecuting your claims against him?

Ans. I have had no personal communication with Mr. Babcock in relation to my rights in said estate, but through my brother William I have called his attention to them, and requested they should be recognized; and also informed him that if they were denied I should insist on them. I have been prevented from prosecuting the claims by the hope that an amicable adjustment of them would be made without recourse to law, and an unwillingness, unless it should be necessary, to involve relations in an unpleasant suit.

Int. 17th. Since you were notified of the sale of said estate, have you requested any person, and whom, to call on said Babcock, and act for you in relation to your rights, and whether or not you have at any time understood or been informed that said Babcock had consented to any adjustment of your rights?

Ans. Yes, I have requested my brother William to call on Mr. Babcock and settle the matter for me if he could, and he informed me that he had had an interview with Mr. Babcock, and that Mr. Babcock had admitted my claims, wholly or in part, and promised an adjustment of them if I would give him long time for payment of what was due me.

Int. 18th. State any other matter or thing relating to said case as fully as if particularly interrogated thereto?

Ans. I do not think of anything further.

Additional interrogatory by plaintiff.

Int. 1st. After your conveyance to Babcock, Nov. 20th, 1828, did you or not use the part of the lot sold to Foster, or attempt so to use it, for a pasture? If so, were you prevented, or induced not to do so by any one, and what reasons, if any, did he give you for your ceasing to do so?

Ans. I turned my cow into the Foster lot through the bars belonging to the Foster lot, and she remained there one or two days at the longest. He requested me not to turn her in, as he had let the feed of the whole, the Foster lot and all, and it would make trouble and break up his arrangement. Upon his request, I turned out my cow immediately, and have never since turned her in.

Cross-interrogatories proposed to Nehemiah Wyman, a witness called by the plaintiff, by the defendant.

Int. 1st. Where did you reside at the time of the making of said

mortgage by you to the defendant? Did you not then reside in Charlestown, in Massachusetts, and did not the defendant then reside there? and has he not ever since resided there? and did you not continue to reside in said Charlestown until the year eighteen hundred and thirty-six?

Ans. I resided in Charlestown, in Massachusetts, when said conveyance was made. The defendant also resided there, and has ever since. I resided there until Sept. 8th, 1835, when I left for Illinois.

Int. 2d. Were you not during said time on terms of intimacy with the defendant? Did you not frequently see him and have frequent business and money transactions with him?

Ans. I was on terms of much intimacy with him; I frequently saw him; I never had any money transactions or business with him whatsoever. I purchased from ten to twelve dollars' worth of goods at his store, which is all the dealings I ever had with him as far as I recollect.

Int. 3d. Did you not in the year 1840, or thereabouts, visit said Charlestown, and frequently see him and converse with him during the continuance of said visit? Do you not now reside in St. Louis, Missouri? and how long have you resided there?

Ans. I visited Charlestown in 1840, and saw defendant frequently while there, and conversed with him; I now reside in St. Louis, Missouri, and have resided here about nine years.

Int. 4th. Did not said Archibald Babcock, immediately upon the delivery of said deed, or very soon thereafter take possession of said land, and fence it and grade it, and fill up the sand-pits thereon? and did he not to your knowledge always thereafter use said property as if it were his own, without consulting with or referring to you, or advising with you, concerning the same? Did he not use said property during the time you continued to reside in Charlestown?

Ans. He did take possession of the land immediately upon the delivery of the deed. He did not fence it; there was a good fence around it. He may have graded a small portion of it to make a road from the brick-yard to the gate. He did not to my knowledge fill up any of the sand-pits on the land. He used said property as if it were his own, without advising with me, except at one time, which was soon after the deed was made, and that was in relation to digging clay on the land. He continued to use said property while I lived in Charlestown.

Int. 5th. Did you, during the time you resided in said Charlestown, control, interfere with, interrupt, disturb, or in any manner meddle with the possession of the land by you conveyed to Archibald Babcock aforesaid, or did you ever do so since you ceased to reside in said Charlestown; or did you ever demand or request of the defendant an account of the rents and profits of said land or

the proceeds thereof, or ever assent to or pretend to said Babcock that you had any claim or right to said land?

Ans. I did not while I resided in Charlestown interfere with the possession of the land, as it was understood that I was to have no control over it. When I learned that he had sold it, I asserted my claim and instructed my brother William to attend to it and make a settlement with him, amicably if he could, and if not, to bring suit against him.

Int. 6th. At the time when said deed, dated November 20th, 1828, was delivered by you to said Archibald Babcock, did not said Archibald give up to you, or to William Wyman for you, the notes that you had given to Francis Wyman, namely: one for six hundred and fifty dollars, and one for six hundred and seventy-six dollars, and dated on or about Dec. 1st, 1820, and also your note to said Archibald for twelve hundred dollars, dated April 26th, A. D. 1826, and your note to said Archibald, dated November 11th, A. D. 1828, for eight dollars and ten cents, and were not said notes cancelled?

Ans. At the time said deed was delivered to said Babcock, none of said notes were given to me, nor to any person for me, nor have they ever been given up to me to this day; they yet remain outstanding against me and uncancelled.

Int. 7th. Were nor all notes that said Archibald held against you given up or cancelled, except the notes of four hundred and eighty-six dollars and fifty dollars? and was it not understood that you were to pay a part of said $486 note for your brother William Wyman; and also said note of fifty dollars, if said land was not sold by said Babcock for enough above all his own individual claims, and said notes of said Francis Wyman?

Ans. There was not a single note either of Francis Wyman or of Archibald Babcock given up or cancelled. I have no recollection of any understanding that I was to pay a part of said $486 note for William Wyman, nor of the fifty dollar note; but the fifty dollar note and a part of the note of $486 belonged to William Wyman, and I supposed that the land deeded was ample security for double the amount.

Int. 8th. Where now are said notes given by you to said Francis Wyman and Archibald Babcock? When did you last see them or have them in your possession, and to whom did you give them when you last parted with them? Annex them to your answer hereto?

Ans. I expect said notes are in the possession of Archibald Babcock. I last saw them at the time I gave the deed. I never had them in possession.

Int. 9th. Was not the mortgage from you to said Babcock for twelve hundred dollars written by Joseph Tufts, esquire, of said Charlestown? and was not the agreement whereby said Archibald agreed to hold said mortgage for security in case he became bound

as security for you, or advanced money to you, contained in the annexed bond in writing, marked "X," and did not said Joseph Tufts write said bond or writing, and was it not delivered to you as evidence that said Babcock held said mortgage for the purposes therein contained, and was there any other writing or evidence of the purpose for which said mortgage was given?

Ans. It was written I think by Joseph Tufts, as was the bond. The bond or writing marked "X" contained the agreement whereby said Babcock agreed to hold said mortgage for security. Said bond or writing was never in my possession, and was not delivered to me; there was no other writing or evidence of the purpose for which said mortgage was given that I know of.

Int. 10th. Did you not retain said bond or writing in your possession until the delivery of the deed from you to said Babcock, dated November 28th, 1828, and was not the said bond or writing delivered by you to said Babcock?

Ans. I do not recollect to have had possession of the bond at all.

Int. 11th. Was there any building on said land before you conveyed the same to said Babcock, or were the buildings occupied by your father or you connected with or adjoining said land? Did not your father leave eight children living at his death?

Ans. There was no building on said land before I conveyed to Babcock; the buildings occupied by my father or myself were not adjoining said land. My father left eight children living at his death.

Int. 12th. Did you not purchase said land, consisting in all of twelve and one-half acres, at auction, in the year 1820, and did you not give therefor the sum of $2,030 39? And did you not dig holes in said land, and sell out nearly all the sand in said land, and were not all the fences around said land in a ruinous condition at the time you conveyed the same to said Babcock?

Ans. I purchased said land at auction, in the year 1820, and gave for it $2,272 50. I sold some of the sand on the land. I did not dig any holes that I recollect. I sold but a small portion of the sand as I suppose, not exceeding I think seventy-five loads. The fences around said land were in good condition at the time I made the conveyance to said Babcock. The fence on Cambridge road I built all anew in 1822 or 1823; it was excellently built with stone and wood.

Int. 13th. State particularly a full account of all the money you received from the sales of said sand from said land, and from sales of hay grown thereon, and for pasturage and other purposes? And state fully all the purposes for which you used said land?

Ans. I cannot give a particular account of money so received from the sale of sand, but think it did not exceed one hundred dollars. I used said land for mowing, tillage, and pasturing, and received from sales of hay grown thereon, for pasturage and other purposes, I should think about three hundred dollars a year.

Int. 14th. Did you not sell and convey one acre or more of said land to James Foster, and take back a mortgage for $609, the consideration money? And was not said acre or more about thirty-nine rods and twenty links long, and five rods eleven links wide? And was not said land thus sold in the above-described shape for the purposes of a rope-walk? Did said Foster ever pay for said land? State fully and particularly what money was paid to you by said Foster on account of said land? Did you not foreclose said mortgage, and sell the said land to your brother, William Wyman? State fully and particularly how much said William agreed to give you for said land sold to said Foster; and how much has said William paid you for said land? And [how] much have you in any form realized therefor?

Ans. I sold and conveyed one acre or more to James Foster, and took back a mortgage for $609, the consideration money, it being at the rate of six hundred dollars an acre. The land thus sold to Foster was four rods in width and forty rods and a trifle more in length, as near as I recollect. It was sold for a rope-walk. Foster never paid me any part of the consideration. He paid me six months' interest. Foster died insolvent, I think, and I think the mortgage was foreclosed by my brother William at my request; afterwards I sold the Foster lot to my brother William for $1,600 dollars, and have realized that amount from the sale.

Int. 15th. Did you not after the making of said deed, and until your removal into the western country, continue to have dealings with said Babcock? And did you not have a conversation with the said Babcock about settling the accounts of the said last-named dealings just before your departure from Charlestown? And was there not a talk and agreement to pass receipts between you, and was not said passing of receipts only prevented by your hasty departure?

Ans. After the deed was made, in 1828, I had no dealing with Mr. Babcock, except a few items of store account, until I removed to the western country. My regular store account was not kept with him; the whole amount with him was but a few dollars. I have no memorandum of it. I recollect no conversation whatever about passing receipts before I left. I did not take a hasty departure. I was four months or more preparing to go, and all my relations and neighbors knew it.

Int. 16th. Was your conveyance of said land to Edward Wyman dated the twenty-fourth day of Feb., A. D. 1853, a bona fide conveyance to said Edward of said land, and all your right, title, and interest in equity therein, without any reservation, defeasance or secret understanding for your own benefit? If yea, what was the amount of money paid you therefor by said Edward, if any, and state fully all and singular the considerations moving you to make said conveyance, so far as they consisted of payments from said Edward to you or otherwise; and if said conveyance was not made

as aforesaid, state fully and particularly the whole transaction relative to the making of said conveyance, and the purposes for which the same was made; and whether it was not made wholly for the purpose of enabling you to be a witness and to testify in this case?

Ans. The conveyance to Edward Wyman, dated 24th February, A. D. 1853, was bona fide, and I conveyed all my right, title, and interest in equity therein without any reservation, defeasance, or secret understanding for any benefit. The amount paid me by Edward Wyman was three thousand dollars in cash; there was no consideration but that named in the deed, namely, $3,000 in cash. I did not make said conveyance for the purpose of enabling me to be a witness and to testify in this case, but only for the consideration named.

Int. 17th. Did not the first suggestion of making a claim to said land, or upon said Babcock to account to you therefor, or for the rents, profits, or proceeds thereof, come from your brother, William Wyman, to you, and has he not advised and directed you in making said claim and bringing said action?

Ans. I am not quite certain, but think the suggestion to me came from my son Edward. I have advised with my brother William more or less about said claim, and bringing said suit.

Int. 18th. Was not the deed from you to your son Edward, as aforesaid, written by said William Wyman? and was it not sent directly to you by said William, with directions to have the same executed and returned to him, the said William, and did you ever deliver the same into your son Edward's hands, or did you yourself send it by mail or otherwise to said William?

Ans. The deed was in William Wyman's handwriting, but it was never sent to me by him, nor did I receive any directions from him about the execution of it. I did not return the deed to William Wyman, but gave it into my son Edward's hands myself. I have not seen it since, but believe Edward sent it east for record.

Int. 19th. When was the first communication made by said William to you, relative to making said claim against said Babcock? And did he ever before said communication confer with you about the existence of any such claim, or about the value of it? or about disposing of said land, or about the value of said land, or about any opportunity to dispose thereof? If yea, state fully all about said conferences.

Ans. I think in 1851 my brother William made to me the first communication respecting my claim against Babcock. I think that he had never before conferred with me in relation to said claim or land.

Int. 20th. If there was understood between you and said Babcock any defeasance to the deed dated November 20th, 1828, why was not said defeasance reduced to writing? and if said conveyance

was upon any trust, why was not said trust reduced to writing? Answer fully.

Ans. It was a confidential transaction between us three brothers, Archibald Babcock, myself, and brother William, and we all well understood the same and for what intent the conveyance was made. The deed was intended and understood by us three to operate as a mortgage, but being a transaction between brothers, we did not think it necessary to be so particular in setting forth the rights of the respective parties—never anticipating that there would ever be any difficulty in a settlement between Mr. Babcock and myself.

Int. 21st. At the time said conveyance in fee from you to said Babcock, did not you and said Babcock have an account made up showing the amount of your indebtedness to said Babcock?

Ans. (Yes, I did so,) there was such an account made up between us; it was made up by Archibald Dorrance Babcock, son of said Babcock.

Int. 22d. Where is Joseph Tufts, who made said deed from you to said Babcock, and of whom you purchased said land? Is he alive or dead, and how long is it since he died?

Ans. The deed was written by William Wyman, and not by Joseph Tufts. Joseph Tufts is dead; he has been dead over twenty years.

Int. 23d. Have you received any copy of these interrogatories, or any information or intimation from William Wyman, or any other person, as to the nature or purport of these interrogatories, or as to your testimony since this action was brought? If yea, from whom? and what information or intimation? Answer this fully.

Ans. I have never received any copy of these interrogatories, or any information or intimation from William Wyman, or any other person, as to the nature or purport of these interrogatories nor as to my testimony. I never saw these interrogatories nor knew what they were until they were read to me by the commissioner before whom I have given my deposition, and at the time when my answers were made. I had heard that I should have to testify in the case, but did not know what interrogatories would be put to me.

NEHEMIAH WYMAN.

I, Charles H. Tillson, a notary public within and for the county of Saint Louis, State of Missouri, and a magistrate authorized to take depositions at St. Louis, in the District of Missouri, duly commissioned, qualified, and sworn, do hereby certify that at the request of Edward Wyman, plaintiff as aforesaid, I caused the abovenamed Nehemiah Wyman, deponent in the foregoing deposition, to come before me, at the time and place in the caption stated, because the said witness resides a greater distance than one hundred miles from Boston, the place of holding said United States Court, as is stated, and I did not give the adverse party, or cause to be given any notice of the time of taking this deposition, because the said

adverse party does not, as I know or believe, reside within one hundred miles of the place of taking the same; nor has said party any agent or attorney known to me within that distance; that said witness was by me carefully examined, cautioned, and sworn then and there to testify the whole truth; that the said deposition was wholly reduced to writing by me, in the presence of said witness, and that he then and there in my presence subscribed the same; that I am not counsel or attorney for either of the parties, or interested in the event of the cause; that neither of the parties attended at the taking of the deposition, either by himself, agent, or attorney, nor communicated by interrogatories or suggestions with deponent while giving in his deposition; that such deposition was taken in a place separate and apart from all other persons except deponent and myself. All of which is certified to said Court as the cause wherefore this deposition is taken and for the manner it is done, and is herewith returned.

CHARLES H. TILLSON,
Notary Public, Saint Louis county, Missouri.

The deposition of Alexander Leitch, taken before me, Charles H. Tillson, notary public within and for the county of St. Louis, and State of Missouri, and a magistrate authorized to take depositions at Saint Louis in the district of Missouri, at the office of Tillson & Shands, in said city, on the seventh day of October, A. D. 1854, between the rising and setting of the sun, to be read as evidence in a certain suit depending in the Circuit Court of the United States within and for the Massachusetts district, holden at Boston, wherein Edward Wyman is plaintiff and Archibald Babcock is defendant. The said deponent having been first carefully examined and cautioned, and sworn to tell the whole truth, doth depose and say that he lives a greater distance than one hundred miles from said Boston, and he further deposes, says, and answers to the several interrogatories and cross-interrogatories contained in said commission as hereinafter given.

MASSACHUSETTS DISTRICT, ss:
Circuit Court of the United States
for the Massachusetts District.

[*In equity in the case.*]

EDWARD WYMAN
versus
ARCHIBALD BABCOCK.

Interrogatories propounded by Edward Wyman to Alexander Leitch, of Saint Louis, in the State of Missouri, witness by him produced in the above-entitled cause.

Int. 1st. Were you present at the execution of the deed hereto

appended from Nehemiah Wyman to Edward Wyman, and did you sign the same as an attesting, and if so, did the said Nehemiah Wyman and Susan his wife, sign, seal, and deliver the same to the said Edward as their deed at or about the date of the same?

Ans. I was present at the execution of the deed hereto appended from Nehemiah Wyman to Edward Wyman, and I signed the same as an attesting witness, and the said Nehemiah and Susan his wife signed, sealed, and delivered the same to the said Edward as their deed at or about the date of the same.

Cross-interrogatories by said Babcock.

Int. 1st. Do you recollect anything about said transaction except that you signed said deed as an attesting witness? Do you recollect as a fact that said deed was delivered to Nehemiah, or to Edward or which?

Ans. I recollect that the deed was delivered to Edward Wyman.

Int. 2. Were you present at the time said deed was acknowledged? Was it not signed before it was acknowledged? And was it not then taken away? Did you see it acknowledged and delivered? State all the circumstances about the execution and delivery of said deed that you know and remember?

Ans. I was present when the deed was acknowledged. It was not signed before it was acknowledged; it was not taken away before being acknowledged. I saw it acknowledged and delivered. Mr. Long and myself went to Edward Wyman's house and saw the deed acknowledged, and signed the same as attesting witnesses. I saw Edward Wyman pay over to Nehemiah Wyman three thousand dollars, being the consideration of said deed.

ALEX. LEITCH.

I, Charles H. Tillson, a notary public within and for the county of St. Louis, State of Missouri, and a magistrate authorized to take depositions at St. Louis, in the district of Missouri, duly commissioned, qualified, and sworn, do hereby certify that at the request of Edward Wyman, plaintiff as aforesaid, I caused the above-named Alexander Leitch, deponent in the foregoing deposition, to come before me at the time and place in the caption stated, because the said witness resides a greater distance than one hundred miles from Boston, the place of holding said United States Court, as is stated; and I did not give the adverse party or cause to be given any notice of the time of taking this deposition, because the said adverse party does not, as I know or believe, reside within one hundred miles of the place of taking the same; nor has said party any agent or attorney known to me within that distance; that said witness was by me carefully examined, cautioned, and sworn then and there to testify the whole truth; that the said deposition was wholly reduced to writing by me in the presence of said witness, and that he then and there, in my presence, subscribed the same; that I am not

counsel of attorney for either of the parties, or interested in the event of the cause; that neither of the parties attended at the taking of the deposition, either by himself, agent or attorney, nor communicate by intertogatories or suggestions with deponent while giving in his deposition; that such deposition was taken in a place separate and apart from all other persons except deponent and myself; all of which is certified to said Court as the cause wherefor this deposition is taken and for the manner it is done, and is now herewith returned.

And I further certify that Enoch Long, one of the witness named in the commission, is not in this city, and is beyond the process of any summons or attachment which I may issue against him.

CHARLES H. TILLSON,
Notary Public, St. Louis county, Missouri, a Magistrate authorized to take depositions at St. Louis, in the District of Missouri.

["EXHIBIT A."]

2 Notes against N. Wyman, in favor of F. Wyman.....	$650 676
Principal.....	$1326
Interest from Dec. 1st, 1826, to Dec. 1st, 1827, one year	79 56
Interest from Dec. 1st, 1827, to Nov. 20th, 1828.....	1405 56

[*Deed.*]

Know all men by these presents, that I, Nehemiah Wyman, of Saint Louis, in the county of Saint Louis and State of Missouri, in consideration of the sum of three thousand dollars to me paid by Edward Wyman, of said Saint Louis, the receipt whereof is hereby acknowledged, do hereby grant, assign, remise, release, and forever quit-claim unto the said Edward Wyman, and his heirs and assigns, a certain lot or parcel of land situated in Somerville, formerly a part of Charlestown, in the county of Middlesex, and Commonwealth of Massachusetts, containing eleven acres and one-half of an acre, more or less, bounded as follows, viz: southerly on the road leading to Cambridge, fourteen rods and twenty-three links; then easterly on land formerly of James Foster, and being the same land sold to said Foster by Nehemiah Wyman, thirty-nine rods and twenty links; then southerly on said land formerly of said Foster, five rods and eleven links; and on land formerly of the heirs of Jonathan Ireland, eighteen rods and ten links; then southeasterly on land formerly of Timothy Walker, twenty-two rods and nine links; then northeasterly on land formerly of Lamson or Elliot, forty rods and eighteen links; then northwesterly on a range-way, now Franklin street, thirty-five rods and sixteen links; then westerly on the same range-way, five rods and thirteen links; then southwesterly on land formerly of the widow Stearns, six rods and nine links; thence westerly on said land

appended from Nehemiah Wyman to Edward Wyman, and did you sign the same as an attesting, and if so, did the said Nehemiah Wyman and Susan his wife, sign, seal, and deliver the same to the said Edward as their deed at or about the date of the same?

Ans. I was present at the execution of the deed hereto appended from Nehemiah Wyman to Edward Wyman, and I signed the same as an attesting witness, and the said Nehemiah and Susan his wife signed, sealed, and delivered the same to the said Edward as their deed at or about the date of the same.

Cross-interrogatories by said Babcock.

Int. 1st. Do you recollect anything about said transaction except that you signed said deed as an attesting witness? Do you recollect as a fact that said deed was delivered to Nehemiah, or to Edward or which?

Ans. I recollect that the deed was delivered to Edward Wyman.

Int. 2. Were you present at the time said deed was acknowledged? Was it not signed before it was acknowledged? And was it not then taken away? Did you see it acknowledged and delivered? State all the circumstances about the execution and delivery of said deed that you know and remember?

Ans. I was present when the deed was acknowledged. It was not signed before it was acknowledged; it was not taken away before being acknowledged. I saw it acknowledged and delivered. Mr. Long and myself went to Edward Wyman's house and saw the deed acknowledged, and signed the same as attesting witnesses. I saw Edward Wyman pay over to Nehemiah Wyman three thousand dollars, being the consideration of said deed.

ALEX. LEITCH.

I, Charles H. Tillson, a notary public within and for the county of St. Louis, State of Missouri, and a magistrate authorized to take depositions at St. Louis, in the district of Missouri, duly commissioned, qualified, and sworn, do hereby certify that at the request of Edward Wyman, plaintiff as aforesaid, I caused the above-named Alexander Leitch, deponent in the foregoing deposition, to come before me at the time and place in the caption stated, because the said witness resides a greater distance than one hundred miles from Boston, the place of holding said United States Court, as is stated; and I did not give the adverse party or cause to be given any notice of the time of taking this deposition, because the said adverse party does not, as I know or believe, reside within one hundred miles of the place of taking the same; nor has said party any agent or attorney known to me within that distance; that said witness was by me carefully examined, cautioned, and sworn then and there to testify the whole truth; that the said deposition was wholly reduced to writing by me in the presence of said witness, and that he then and there, in my presence, subscribed the same; that I am not

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counsel of attorney for either of the parties, or interested in the event of the cause; that neither of the parties attended at the taking of the deposition, either by himself, agent, or attorney, nor communicate by intertogatories or suggestions with deponent while giving in his deposition; that such deposition was taken in a place separate and apart from all other persons except deponent and myself; all of which is certified to said Court as the cause wherefor this deposition is taken and for the manner it is done, and is now herewith returned.

And I further certify that Enoch Long, one of the witness named in the commission, is not in this city, and is beyond the process of any summons or attachment which I may issue against him.

CHARLES H. TILLSON,
Notary Public, St. Louis county, Missouri, a Magistrate authorized to take depositions at St. Louis, in the District of Missouri.

["EXHIBIT A."]

2 Notes against N. Wyman, in favor of F. Wyman.....	$650 676
Principal.....	$1326
Interest from Dec. 1st, 1826, to Dec. 1st, 1827, one year	79 56
Interest from Dec. 1st, 1827, to Nov. 20th, 1828.....	1405 56

[*Deed.*]

Know all men by these presents, that I, Nehemiah Wyman, of Saint Louis, in the county of Saint Louis and State of Missouri, in consideration of the sum of three thousand dollars to me paid by Edward Wyman, of said Saint Louis, the receipt whereof is hereby acknowledged, do hereby grant, assign, remise, release, and forever quit-claim unto the said Edward Wyman, and his heirs and assigns, a certain lot or parcel of land situated in Somerville, formerly a part of Charlestown, in the county of Middlesex, and Commonwealth of Massachusetts, containing leven acres and one-half of an acre, more or less, bounded as follows, viz: southerly on the road leading to Cambridge, fourteen rods and twenty-three links; then easterly on land formerly of James Foster, and being the same land sold to said Foster by Nehemiah Wyman, thirty-nine rods and twenty links; then southerly on said land formerly of said Foster, five rods and eleven links; and on land formerly of the heirs of Jonathan Ireland, eighteen rods and ten links; then southeasterly on land formerly of Timothy Walker, twenty-two rods and nine links; then northeasterly on land formerly of Lamson or Elliot, forty rods and eighteen links; then northwesterly on a range-way, now Franklin street, thirty-five rods and sixteen links; then westerly on the same range-way, five rods and thirteen links; then southwesterly on land formerly of the widow Stearns, six rods and nine links; thence westerly on said land

formerly of the widow Stearns, thirteen rods and twelve links; then southwesterly on land formerly of Alexander Geddes, two rods and twenty links; then westerly on said land formerly of said Geddes, twenty rods and eighteen links, to Cambridge road aforesaid, being the same land which the said Wyman purchased of Joseph Tufts, administrator of his father's estate, as will appear by deed bearing date December first, A. D. eighteen hundred and twenty, and recorded in the Registry of Deeds, book 235, page 155, excepting one acre sold to James Foster by said Wyman, as will appear by deed bearing date October first, A. D. eighteen hundred and twenty-five, and recorded in the Registry of Deeds for Middlesex county, book 264, page 412, reference thereto will more fully appear. Also all my right and claim in equity in and to an account against Archibald Babcock as mortgagee of said land, under and by virtue of the conveyance in mortgage made to him by me of the land aforesaid, on the twentieth day of November, A. D. eighteen hundred and twenty-eight, and the parol defeasance made part of and accompanying the same, or as trustee of the proceeds of the sale of the same; and to all sums of money which may be recovered against said Babcock by virtue of any suit or suits which may be instituted by said Edward Wyman against said Babcock for the recovery of the same, whether as rents and profits or proceeds of sale of said land by him received:

To have and to hold the afore-released premises, with all the privileges and appurtenances to the same belonging, to the said Edward Wyman, his heirs and assigns, to his and their use and behoof forever. And I, the said Nehemiah Wyman, for myself and for my heirs, executors, and administrators, do covenant with the said Edward Wyman, his heirs and assigns, that the premises are free from all incumbrances made or suffered by me, except my wife's right of dower and the aforesaid mortgage to said Archibald Babcock, and another mortgage executed by me on the twenty-sixth day of April, A. D. eighteen hundred and twenty-six, to said Archibald Babcock; and that I will, and that my heirs, executors, and administrators, shall warrant and defend the same to the said Edward Wyman, his heirs and assigns, forever against the lawful claims and demands of all persons, claiming by, through, or under me, except as aforesaid, but against none other.

In witness whereof, I, the said Nehemiah Wyman and Susan F. Wyman my wife, in token of her release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals, this twenty-fourth day of February, in the year of our Lord eighteen hundred and fifty-three.

NEHEMIAH WYMAN, [L. S.]
SUSAN F. WYMAN, [L. S.]

Signed, sealed, and delivered in presence of—
ALEX. LEITCH,
ENOCH LONG.

STATE OF MISSOURI,
City and County of Saint Louis, ss:

February 24th, A. D. 1853. Then personally appeared the aforenamed Nehemiah Wyman, and acknowledged the foregoing instrument by him subscribed to be his free act and deed, before me.

In witness whereof, I have hereto set my hand and seal as commissioner for the State of Massachusetts, in Missouri, on the day and year, and in the city, county, and State last above written.

EDWARD W. SHANDS,
Commissioner for Massachusetts in Missouri.

Cambridge, March 9, 1853. Received and recorded with Middlesex deeds, book 648, page 68.

Pr. CALEB HAYDEN, *Reg.*

UNITED STATES CIRCUIT COURT,
Massachusetts District.

In Equity.

EDWARD WYMAN
versus
ARCHIBALD BABCOCK.

Interrogatories to be proposed to William Wyman, of Charlestown, in said district, in behalf of complainant.

1. What is your age and place of residence?

2. How are you related to or connected with the plaintiff, and how with the defendant; and how are the plaintiff and Nehemiah Wyman, of St. Louis, connected with or related to the defendant?

3. Were you or not present at, or did you take any part in any arrangement or agreement between defendant and said Nehemiah Wyman, as to a conveyance of land in Charlestown by the latter to the former, by a deed dated November 20, 1828, or were you or not consulted about the same, and by whom?

4. If you say you were so present, or took part in, or were consulted about any such transaction, will you state whether or not the purposes and objects of said conveyance were or were not disclosed to you by either or both the parties; and were or were not the indebtedness or liabilities of said Nehemiah to said defendant, either in his individual capacity or otherwise, known to you at that time, or discussed or referred to by either or both said parties?

5. Whether or not do you know, or were you informed by either, and which or both of said parties; what was the consideration of a note and mortgage given by said Nehemiah to said defendant, for $1,200, dated April 26th, 1826, and whether or not after said mortgage and prior to the 20th November, 1828, any sums, and if any, what had been advanced to or paid for said Nehemiah by said defendant, and upon the security of said mortgage?

6. Do you know, or were you informed by either, and which, or

by both of said parties, whether or not said defendant, as executor and trustee under the will of Francis Wyman, held, on 20 November, 1828, any mortgage upon the land conveyed at that date by said Nehemiah to defendant; if so, whether or not had any and what part of said mortgage been paid; up to what date had the interest thereon been paid; had or not the interest of said mortgage been unpaid for any and what length of time; who was then in possession of said land; and what was the situation and condition of the children and devisees of said Francis Wyman as to means of support?

7. Do you know whether or not said Nehemiah Wyman, on the 20th November, 1828, was indebted in any and what sum to the heirs of Nehemiah Wyman, senior, and who was the agent of said heirs?

8. Was or not said Nehemiah at said last-named date indebted to said defendant in his individual capacity in any and what sum?

9. Whether or not at the time of said conveyance, dated November 20th, 1828, was anything and what said to said Nehemiah by said defendant, or by yourself in defendant's presence, in relation to conveying said property absolutely to said defendant; if so, state what was said, and by whom, and whether said Nehemiah was reluctant or willing to make such conveyance; was he or not pressed by any person or persons, and if so, by whom and how?

10. Do you know whether or not said land was the birth-place of said Nehemiah, or was his paternal estate, and had it or not been held, cultivated, and enjoyed by him, and for how many years prior to 20th November, 1828, and who, if any one, took and held possession of said land after said conveyance of that date to said Babcock?

11. Was or not any reckoning made at the time of said conveyance between the parties thereto; if so, in whose handwriting is it; how was he related to defendant; to whom was it delivered; where is it; if you have it, produce it, and state how you came by it; and if you shall say it is held by Nehemiah Wyman, will you produce a copy, explain each item, and state whether or not said reckoning was made or produced in your presence, and by whose directions, and whether or not the same was agreed to or disagreed to by either party?

12. What was the actual consideration of said deed of said Nehemiah to said defendant, dated November 20th, 1828, and how you know the fact; state each item distinctly, and the aggregate; and if the same differs from said paper reckoning, state in what particular, and whether or not said Nehemiah paid for recording said deed?

13. At the time said conveyance was made, if anything was said by said Babcock and Nehemiah, as to how said Babcock was to hold the same, whether absolutely and as his own, or as security; state the same fully, and what, if anything, was agreed between the parties in relation thereto.

14. Whether or not was anything said at that time by said Babcock; if so, what, as to said Nehemiah having or not having the land again? State fully all that was said on the subject.

15. What was done with the notes given prior to the date of said deed of 20th November by said Nehemiah to said defendant, and also those given to his testator; in whose handwriting was each of them; were they or not, or any of them, given up by defendant, or cancelled in any way at the time of said conveyance; or was there or not any agreement of any description that they or any of them should be or not given up to said Nehemiah or be cancelled?

16. Did any of said notes ever come into your possession; if so, when; whether before or after the sale of said land by defendant, and whether or not had any claim been made on defendant to account for and hand in its proceeds at the time said notes came into your hands; state how, if at all, they came into your possession, and at what date, and annex the same to your answer?

17. For what consideration were those notes produced by you, if any, given to defendant; whether in part or whole in his individual capacity, or as trustee or agent for others? Answer fully.

18. Whether or not, at the time of said conveyance of 20th November, 1823, was any agreement; and if so, what, made between the parties thereto, as to management of said land and the application of the rents, or what could be got from the land? If so, state the same fully.

19. Whether or not to your knowledge, prior to 20th November, 1828, said Nehemiah had sold off part of said land; and if so, what number of acres and at what price, and whether or not the part sold was more or less valuable than the part conveyed to defendant? Did said Nehemiah take back a mortgage; and if so, did he or not take possession of the land afterwards; and who occupied and received the rents and profits after November, 1828?

20. Whether or not was the value of said land less, and if so, how much less on the 20th November, 1828, than at the time of said sale of part thereof, by said Nehemiah, and what was its value in 1844; when sold by said Babcock was said land sold or not by Babcock for its full value?

21. What was Babcock's condition at the time he sold said land; state, if you know, from his statement or otherwise, whether he was or was not possessed of ready means, or was, or was not pushed to raise money?

22. When did Nehemiah Wyman remove from Massachusetts, and whether in good circumstances or poor; and how have his circumstances been since, and what has been his health?

23. When did you, and when did said Nehemiah first know that said Babcock either designed to sell or had sold said land?

24. Whether or not has said land, since said conveyance to Babcock, fluctuated in value?

25. Whether or not did said Nehemiah, after learning the sale

of said land by said Babcock, by himself or his agent, to your knowledge, make any complaint to said Babcock, or call upon him to account for the proceeds of the sale; if so, when; state the conversation, and whether or not anything and what was said about lapse of time by said Babcock?

26. Whether or not have you, since said sale, had any interview with said Babcock as to adjusting the claim of said Nehemiah; if so, state whether or not he has at any time stated anything and what about the rights of said Nehemiah; state fully all that he said, and the result?

27. What was the rentable value of said estate, in your judgment, from 1828 to 1844, and what might said Babcock with common diligence have got off of it in grass, clay, sand, stone, or crops during that period?

28. Will you state whether or not at any time after said conveyance of November 20th, 1828, to said Babcock and when any discharge on the records of deeds was ever made by him of any existing mortgage, and if so, on his own motion, or at the suggestion of any one, and whom; state all that occurred, if anything, and particularly whether any surrender was at that time made or offered to be made of any notes which such mortgage was given to secure?

29. If you know any other matter or thing material to the case, state the same as fully as if particularly interrogated?

SIDNEY BARTLETT,
Plaintiff's Solicitor.

Additional interrogatory.

1. At the time the plan annexed to defendant's interrogatories was made, what was the value of the land compared with its value in November, 1828; was there or not any intervening financial crisis; if so, when did it occur?

[Objected to as incompetent.]

2. Have you not seen the $8 10 note of N. Wyman to Babcock in the hands of any person, and whom and how recently, and under what circumstances?

S. BARTLETT,
For Plaintiff.

The defendant in the above-entitled cause objects to the interrogatories hereafter named, propounded by the plaintiff to Wm. Wyman, a witness called by the plaintiff, for the following reasons:

To interrogatories 4th, 5th, 6th, 11th, 13th, because said interrogatories ask for the declarations of third persons. To the 19th, 20th, 22d, 23d, 24th, and 27th interrogatories as incompetent. To the 25th interrogatory, if the deponent's information does not appear to be not derived from third persons.

BENJAMIN DEAN,
Defendant's Solicitor.

The defendant also objects to all of said interrogatories that inquire for any conversations and oral declarations made at or about the time the writings inquired about were made as incompetent to effect said writings, and puts his own interrogatories, concerning the same "*de bene esse.*"

BENJAMIN DEAN,
Defendant's Solicitor.

UNITED STATES CIRCUIT COURT,
Massachusetts District, ss.

In Equity.

EDWARD WYMAN
versus
ARCHIBALD BABCOCK.

Cross-interrogatories proposed to William Wyman, a witness called by the plaintiff, by the defendant.

Int. 1. Sometime in 1850 or 1851 did you not call upon the defendant and inquire of him whether he had not some notes belonging to the Nehemiah Wyman heirs; did he not then give you the fifty dollar note as belonging to them; did you not then also ask permission to look over the defendant's papers, and did you not claim the $486 79 note as belonging to said heirs; and did not said defendant, though not admitting said latter claim, allow you to take away with you said notes?

Int. 2d. Did you not subsequently call upon the defendant and present to him for payment an account in your favor amounting to $1,800 00; did not you and said defendant have a dispute about said account, in which you claimed that he owed said account, and in which he claimed that you were largely indebted to him; and did you not make an offer to settle said account with said Babcock for the sum of $1,500 00, and did not said Babcock offer to refer the same to referees?

[Objected to for substance.]

Int. 3d. Where is said account; have you now got it; do you know what it is? Annex it to your answers hereto. Had you not then bought out the interests of the other heirs of Nehemiah Wyman in his estate?

[Objected to for substance.]

Int. 4th. Did you not leave said account with said Babcock; and did you not subsequently call upon said Babcock, and request it of him, and take it away? What did you do with it?

[Objected to for substance.]

Int. 5th. If you say you do not know where said account is, and cannot procure it to annex it to your answers hereto, state fully its contents. Were not said notes of $486 79 and $50 charged in said account against said Babcock?

[Objected to for substance.]

Int. 6th. After taking away said account, did you not make a

new account against said Babcock; and is not the annexed account, marked "A," said account?

[Objected to for substance.]

Int. 7th. Did not said Babcock utterly deny the charge for grass or rent of the Foster lot, as contained in said account, and others of said items?

[Objected to for substance.]

Int. 8th. Did you not by urgent solicitations, and by an express promise to said Babcock to save him harmless and indemnified from all loss and damage arising therefrom, prevail upon said Babcock to sign a bond as surety for one Thomas Pike, jr., to the President, Directors, and Company of the Market Bank, in Boston, for the faithful performance of said Pike's duties as a teller of said bank? Did not said Babcock at first refuse unless you would give him your bond? And did you not thereupon prevail upon him to sign the same by your promise upon your honor that you would yourself pay all sums that he might be called upon to pay? Was he not called upon to pay, as his contribution, the sum of $1,800? and did you not pay $300 of said sum, and said Babcock $1,500 of said sum, and did you not promise him to pay the said amount to him again? Did you ever pay to him said sum? Did not said Babcock, at the time you presented said account, claim said sum of $1,500 of you?

[Objected to for substance.]

Int. 9th. Did not you first mention to said Babcock that if there was any claim made that he was liable to account to said Nehemiah for the proceeds and profits of said land conveyed by said Nehemiah to him? and did you not do this during the time you were urging your own claims upon him?

Int. 10th. Was it not after you had presented your first account to said Babcock for payment, and after he had refused to pay the same that you claimed that said deed of Nehemiah to him was only as collateral?

Int. 11th. Before you made any claim whatever of said Babcock, did you not call upon him as owner of the claims and estate of the heirs Nehemiah Wyman for an examination of his papers? and did you not by such means obtain the privilege of such examination? Did you not promise to return the two notes you received of said Babcock? Did you return them?

Int. 12th. Are not the copies filed in this suit of the mortgage of Nehemiah Wyman to Francis Wyman, of the will of said Francis Wyman, of the deed of said Nehemiah to James Foster, of the discharge by said Babcock of the land conveyed to said Foster, of the mortgage of said Nehemiah to said Babcock, and of the deed of said Nehemiah to said Babcock—in your handwriting?

Int. 13th. Is not the deed from Nehemiah Wyman to Edward Wyman in your handwriting? Did you not send the said deed to him to be executed? And did he not return said deed to you?

Have you not examined the records in the Middlesex Registry of Deeds with reference to said suit, and consulted counsel concerning the same? And did you not direct said suit to be brought?

Int. 14th. Did you not reside in said Charlestown at the time of said conveyance by said Babcock? And did you not know of said conveyance at or about the time said conveyance was made?

Int. 15th. Was there ever any building erected on said land until said Babcock erected one when he had opened a ledge on said land? Was not said building worth nearly $1,000? And was not said building on said land when the same was sold by him?

Int. 16th. Was not said deed from said Nehemiah to said Edward Wyman made in pursuance of your advice, for the purpose of enabling said Nehemiah to be a witness? How long is it since said Nehemiah has visited said Charlestown?

Int. 17th. Are you not pecuniarily interested in the result of this suit? Do you not expect some benefit from this suit if the plaintiff is successful? State fully all the agreements and understanding between you and said Nehemiah or said Edward, whereby your services in this suit are to be rewarded and whereby you expect to derive a benefit?

Int. 18th. Is not the annexed paper, (marked "B" on the margin,) in your handwriting? And was it not produced by you to said Babcock as a memorandum shewing the consideration of said deed of Nov. 20th, 1828?

Int. 19th. Was not said Foster land sold in a long narrow strip or piece, for the purpose of a ropewalk? And was it not sold for a larger price for that reason? Was not the entire purchase-money therefor secured by mortgage? And was any of said sum ever paid by said Foster; if yea, how much? Do you not now own said land? Of whom did you purchase it, and for how much, and when?

Int. 20th. If in answer to direct interrogatory No. 21, you say that you know from said Babcock's statements or otherwise that he was not possessed of ready means and was pushed to raise money, state whether his embarrassment did not arise from the failure of the Phenix Bank of Charlestown, of which you were the President, and whether he had not, at your request, invested $3,000 belonging to the heirs of Francis Wyman in the stock of said bank, and whether he did not have to suffer the loss arising from said failure because he had taken the certificates of stock in his individual name, without mention of his representative capacity. Did the stockholders ever receive any income from said stock after the failure of said bank? Did not the stockholders suffer a total loss of their stock?

[Objected to for substance.]

Int. 21st. Is not the annexed paper, marked "C," in your handwriting? Was it not made by you for said Babcock in or about the year 1831? And was it not submitted to the proper persons

or commissioners, for the purpose of inducing them to purchase the same for the State Lunatic Hospital that was subsequently located at Worcester? Was it not drawn by you for that purpose? Did you not then approve of it? Was there at that time any mention by said Babcock or you of any rights of said Nehemiah to said premises? Is not the entire writing on said plan and the endorsement thereon your own?

Int. 22d. After you heard of the sale of said land by said Babcock, did you not call upon said Babcock's wife, and complain that said Babcock had not sold said land to you? And did you not say to her that he had promised to let you know when he was about to sell it? and that you were to have the first chance to buy it at any price that he might choose to sell it for?

Int. 23d. Have you said notes of $50 and $486 79? If yes, return them with your answers hereto. Is there not on said note for $486 79 some endorsement or writing made by said Babcook, Nov. 20, 1828? Was not said writing made on said note by said Babcock because you fixed the consideration of said deed so as to include said $50 note and the whole of said note of $486 79, of which last sum $86 71 was for money due the heirs of Nehemiah Wyman? and was not said writing made on said note because he would not give for said land said entire sum named as the consideration in said deed? and did he not then say he would not for said land agree to pay said $50 note, and said sum of $86 71 in addition to the other sums named in said annexed paper, marked "B," and forming the real consideration for said deed?

Int. 24th. Was not said mortgage of Nehemiah Wyman to Francis Wyman discharged on the records at your suggestion, because said Babcock was about to offer it for sale? Were not the notes secured by said mortgage given up long before that time? and was not said discharge made on the records with reference to the sale of the same for the Massachusetts Lunatic Hospital or otherwise?

Int. 25th. If you say said land was the birth-place of said Nehemiah, state on what part of said land the building in which he was born was situated, and describe it. If you say it was his paternal estate, state what you mean by its being his paternal estate.

Int. 26th. Did not said Nehemiah occupy said land before 1828? and did not said Babcock occupy it after said date?

Int. 27th. Did not Joseph Tufts, of said Charlestown, sell said land to said Nehemiah Wyman, as administrator of your father's estate? Did not said Tufts make the writings at the conveyance of said Nehemiah Wyman to said Babcock? Has not said Tufts since died? and when did he die? Give the date of his death if you can.

Int. 28th. If you say anything was said to you by said Babcock about lapse of time, state at which conversation anything of that

kind was said, and how it came to be said, and state all that was said.

BENJAMIN DEAN.
Defendant's Solicitor.

Oct. 16, 1854. C. C. U. S., Mass. Dist. Filed in the Clerk's Office.
Attest: *Clerk.*

Opened in Court, Oct. 16th, 1854.
Attest: *Clerk.*

(A)

DR. *Archibald Babcock in account current and interest account to January 1st, 1853, with Wm. Wyman.* CR.

		Interest.	
1831. Jan'y 1.	To 7-20ths of $41 rec'd for rent, upland and marsh, 1830	$18 94	$14 35
1832. Jan'y 1.	To 7-20ths of $41 rec'd for rent, upland and marsh, 1831	18 08	14 35
1833. Jan'y 1.	To 7-20ths of $33 rec'd for rent, upland and marsh, 1832	13 86	11 55
1834. Jan'y 1.	To 7-20ths of $45 rec'd for rent, upland and marsh, 1833	17 96	15 75
1835. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1834	18 90	17 50
1836. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1835	17 85	17 50
1837. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1836	16 80	17 50
1837. Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunkerhill, 1836.	4 44	4 63
1838. Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunkerhill, 1837.	4 17	4 63
1838. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1837	15 75	17 50
1839. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1838	14 70	17 50
1839. Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunkerhill, 1838.	3 89	4 63
1840. Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunkerhill, 1839.	3 61	4 63
1840. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1839	13 65	17 50
1841. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1840	12 60	17 50

1841. Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunkerhill, 1840.	3 33	4 63
1842. Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunkerhill, 1841.	3 06	4 63
1842. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1841.....	11 55	17 50
1843. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1842.....	10 50	17 50
1843. Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunkerhill, 1842	2 78	4 63
1853. Jan'y 1.	To cash rec'd of B. T. Blodget, for clay, Jan'y 1, 1835.....	47 52	44 00
1853. Jan'y 1.	To cash rec'd of B. T. Blodget, for clay, Jan'y 1, 1836.....	68 85	67 50
1853. Jan'y 1.	To cash rec'd of Wm. C. Davidson, for clay, Jan'y 1, 1837.	37 60	39 17
1853. Jan'y 1.	To grass, or rent of the Foster lot, from 1835 to 1844, inclu. 10 yrs.....	93 60	120 00
		$473 99	$516 58
1853. Jan'y 1.	To amount of interest, as above, to date...		473 99
			$990 57
1853. Jan'y 1.	To balance due W. Wyman, brought from below.....		$5 72
		Interest.	
1853. Jan'y 1.	By amount dividend due from F. M. McKenna, June, 1831.	$26 06	$20 12
1853. Jan'y 1.	By amount bill, repairs of fences, &c., from 1830 to 1842, inc.....	4 76	4 96
1853. Jan'y 1.	By W. Wyman's note, dated Feb. 2, 1832, given up.....	446 29	355 61
1853. Jan'y 1.	By W. Wyman's balance note, dated June 8, 1841, given up.	52 05	75 00
		$529 16	$455 69
1853. Jan'y 1.	By amount of interest, as above, to date		529 16
			$984 85
1853. Jan'y 1.	Balance due W. Wyman, carried above.		5 72
			$990 57

Errors and omissions excepted, and balance received.

(B)

Land on Cambridge Road, 20th November, 1828, viz:

F. Wyman's heirs' mortgage note for	$650 00		
F. Wyman's heirs' mortgage note for	676 00	$1,326 00	
Interest, annually, from Dec. 1, '26, to Dec. 1, '27, 1 year		79 56	
		$1,405 56	
Interest, annually, from Dec. 1, '27 to Nov. 20, '28, 11 mos. 19 dys		81 76	$1,487 32
N. Wyman's note in favor of A. Babcock, bearing date Nov. 7, 1828	$486 79		
Interest from Nov. 7th to 20th, 13 days	1 04	$487 83	
N. Wyman's note, favor of A. Babcock		8 10	
N. Wyman's note, favor of A. Babcock for heirs		50 00	$545 93
			$2,033 25
Recording the deed, probably			62
Total			$2,033 87

Memorandum by W. Wyman.

For money paid Bunker Hill Bank	$350 00		
Interest from Jan'y 1, 1828, to Nov. 7,	17 85	$367 85	
For money due heirs, N. Wyman, probably		86 71	$454 56
Difference to make up the $486 79 note, is			32 23
			$486 79

C.

Bound North-easterly on this ground.

40 rods, 18 links.

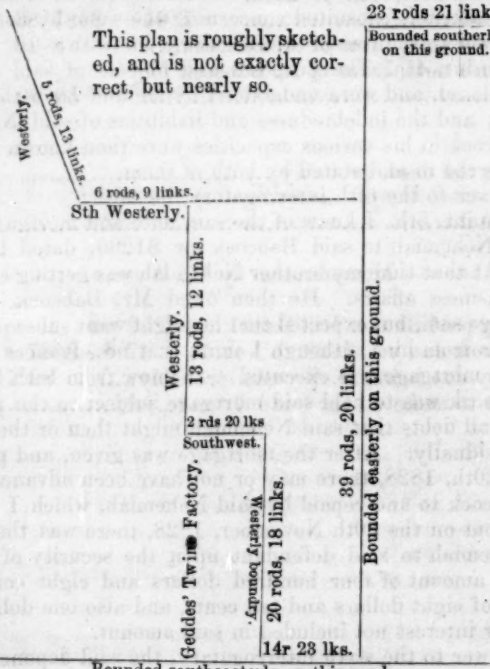
This lot of ground contains about 12 acres. That part of the lot running from Cambridge road to the dotted line is about level with the road; then it rises suddenly about from 30 to 40 feet in height, and makes about all above the dotted line nearly level. There is in this lot a ledge of stone sufficient for all the buildings, if required; and a large quantity of good mason's sand. Bricks can be delivered here cheaper than they can be in Boston or elsewhere. This ground has an excellent soil, and is easily cultivated; will be sold for two hundred dollars an acre by applying to Archibald Babcock, Charlestown neck.

Bounded Northwesterly.

35 rods, 16 links.

Bounded on this ground easterly.

22 rods, 9 links.



This is a range-way, running about twenty feet wide, from Cambridge road to opposite the Nunnery, Winter-hill road.

Bounded southeasterly on this road.

Road leading from Charlestown Neck to Cambridge.

McLane Asylum, about opp. this lot.

Deposition of William Wyman.

I, William Wyman, the deponent named in the annexed commission, having been first duly cautioned and sworn, do testify and say, in answer to the interrogatories to said commission annexed, as follows:

Ans. to int. 1st. My age is fifty-three years, and I reside in Charlestown, Mass.

In answer to the second interrogatory, he saith:

Ans. to int. 2nd. The plaintiff is my nephew. The defendant's wife is my sister. The plaintiff is the defendant's wife's nephew, and Nehemiah Wyman, of St. Louis, is my brother and the defendant's brother-in-law. The plaintiff is the son of Nehemiah Wyman.

In answer to the third interrogatory, he saith:

Ans. to int. 3d. I was so present, and did take part in the arrangement and agreement between the defendant and said Nehemiah Wyman, as to the conveyance of the land inquired of in this interrogatory, and was consulted concerning the same by both parties.

In answer to the fourth interrogatory, he saith:

Ans. to int. 4th. The purposes and objects of said conveyance were disclosed, and were understood by me and by both parties at the time; and the indebtedness and liabilities of said Nehemiah to said Babcock in his various capacities were then known to me, and were referred to and stated by both of them.

In answer to the fifth interrogatory, he saith:

Ans. to int. 5th. I know of the said note and mortgage given by the said Nehemiah to said Babcock for $1200, dated 26th April, 1826. At that time my brother Nehemiah was getting embarrassed in his business affairs. He then owed Mr. Babcock, personally, not a large sum, but expected that he might want subsequent accommodations from him, although I think that no advances were made when the mortgage was executed. I know from both parties that Mr. Babcock was to hold said mortgage subject to the payment of any and all debts that said Nehemiah might then or thereafter owe him individually. After the mortgage was given, and prior to November 20th, 1828, there may or not have been advances made by Mr. Babcock to and repaid by said Nehemiah, which I knew nothing of; but on the 20th November, 1828, there was then due from said Nehemiah to said defendant upon the security of said mortgage the amount of four hundred dollars and eight cents, besides the sum of eight dollars and ten cents, and also one dollar and four cents, for interest not included in said amount.

In answer to the sixth interrogatary, the said deponent saith:

Ans. to int. 6th. I knew of the mortgage on the land when it was conveyed, Nov. 20th, 1828, by said Nehemiah to said defendant, and I derived my information of what had been paid thereon from both parties then present. The mortgage was held by Mr. Babcock

as executor and trustee under the will of Francis Wyman. The mortgage was dated December 1, 1820, and made by said Nehemiah to his brother Francis, to secure three promissory notes signed by said Nehemiah of the same date, amounting in all to two thousand and thirty dollars and thirty-nine cents; namely, one note for six hundred and seventy-six dollars, one note for six hundred and fifty dollars, and one note for seven hundred and four dollars and thirty-nine cents, with interest, payable semi-annually. The said Nehemiah had, on or about Dec. 1, 1824, paid the note of seven hundred and four dollars and thirty-nine cents ($704 39) with its interest. The other two notes, amounting to thirteen hundred and twenty-six dollars ($1326) remained unpaid; and the interest on them both had been paid to December 1st, 1826; and no more interest had been paid on them, then nearly two years. The two remaining notes with interest amounting to one hundred and sixty-one dollars thirty-two cents, then amounted to fourteen hundred and eighty-seven dollars and thirty-two cents (1487 32.) The interest was computed annually. The said Nehemiah was then in possesssion of said land. The situation and condition of the widow and children of Francis Wyman were such as to require the punctual payment of the interest due on the notes for their support. They could not well get along without it, and depended upon it; and Mr. Babcock had been obliged to advance the interest over due on the notes to them for their immediate support; and he was unwilling to do so any longer.

In answer to the seventh interrogatory, he saith:

Ans. to int. 7th. I do know that Nehemiah Wyman was then indebted to heirs of Nehemiah Wyman, senior, in the sum of one hundred and thirty-six dollars and seventy-one cents, (136 71) for which he had previously given his notes to said Babcock, who was the agent for collecting said heirs' rents. Eighty-six dollars and seventy-one cents of said sum ($86 71) was included in the note to said Babcock of four hundred and eighty-six dollars seventy-nine cents, (486 79,) made in the settlement on November 7th, 1828, and for fifty dollars of said sum which had been omitted in said settlement, the said Nehemiah made the note to him of fifty dollars, dated November 11th, 1828.

In answer to the eighth interrogatory, he saith:

Ans. to int. 8th. The said Nehemiah was then indebted to said defendant in his individual capacity in the sum of four hundred dollars and eight cents; besides eight dollars and ten cents, in all four hundred and eight dollars and eighteen cents, (408 18;) and if a dollar and four cents' interest be added up to Nov. 20th, 1828, it will then make the sum total four hundred and nine dollars twenty-two cents, ($409 22.)

In answer to the ninth interrogatory, he saith:

Ans. to int. 9th. The conveyance of the land Nov. 20th, 1828, was brought about in this way, my brother, the said Nehemiah, had

then been for some time embarrassed in his pecuniary affairs. I had previously advised him to make a settlement of his affairs, and offered to aid him in doing so. He was willing to sell all his property, except the land in question, to pay his debts. To this land he was very much attached. He had worked upon it while a boy, and when a man for more than a quarter of a century. He had bought it when sold by his father's administrator, had walled, fenced, and otherwise improved it, and would not sell the land at any rate whatever. He had already been at times and still was delinquent in paying the interest due on the mortgaged notes to the heirs of Francis Wyman, who had depended upon the interest for their support; and Mr. Babcock was unwilling to suffer it go on so any longer, without some certainty that the interest on the notes should be regularly paid thereafter. Then knowing as I did my brother's easy disposition and procrastinating habits, I believed that if he kept possession of the land, when having no other property left him, besides a large family to support, he would most likely get the income from the land, and still neglect to pay the interest on the notes, as he had done before, and which in the end might result in a foreclosure of the mortgage, and he lose the land he so much wished to keep after all. Seeing it so, I proposed to Mr. Babcock to have my brother convey the land directly to him, that he would then have the control of it, and its income would then insure to him the interest on the notes; and to let my brother have the land again whenever he should pay the debts to him, which were then secured by it, and Mr. Babcock agreed to do so, but my brother objected to do it. He was unwilling to yield up the possession of the land to Mr. Babcock, and wanted to keep it himself, and held off several days objecting. Being still impressed that it was the better way for him to do, I then made it a condition that unless he would convey the land as advised, I would not assist him in the settlement of his affairs at all. He then, coerced as he was, yielded, and reluctantly made the conveyance on the 20th November, 1828, under the full promise and assurance, both by Mr. Babcock and myself, then present, that he should have the land again at any time by paying the debts then secured by it; and directly afterwards I assisted my brother in the settlement of his affairs.

In answer to the tenth interrogatory, he saith:

Ans. to int. 10th. The land in question was not the birth-place of said Nehemiah, and whether or not it was his paternal estate, I do not comprehend. It was land of which my father died seized, and was sold by his administrator to my brother for payment of debts. My father purchased the land, a part of it in 1801; the whole of it in 1806 for thirty three hundred and odd dollars. The lot then contained about thirteen acres. He subsequently sold less than half an acre for six hundred dollars, and when he died the lot contained twelve and five eighth acres, which his administrator sold to my brother. Said Nehemiah had held, cultivated and enjoyed

the land himself from the time he purchased it in 1820, to the time he conveyed it, Nov. 20, 1828, about eight years, and then Mr. Babcock took and held possession of the land afterwards; but my brother had worked upon the land from 1801 to 1828—twenty-seven years.

In answer to the eleventh interrogatory, he saith:

Ans. to int. 11th. There was a reckoning-list made at the time of the conveyance, and I have it here to annex to my deposition. The same is marked "A. E. Merwin, commissioner," by the commissioner, and is annexed. I will explain it. The first amount, $1,487 55, is for the mortgaged notes and interest due to the heirs of Francis Wyman, and the twenty-three cents deducted therefrom is for one day's interest overcharged, making the corrected amount fourteen hundred and eighty-seven dollars, thirty-two cents, (1,487 32.) The next amount, $487 83, is for the note of $486 79 and interest, due to Mr. Babcock in part, and in which note is included eighty-six dollars seventy-one cents, ($86 71,) due to the heirs of Nehemiah Wyman, senior. The next amount, $8 10, is for a note also due to Mr. Babcock. The next amount, $50, is for a note to Mr. Babcock, due to the heirs of Nehemiah Wyman, senior; and to correct the footing of the list the same twenty-three cents should also have been deducted from it, then making the aggregate two thousand thirty-three dollars and twenty-five cents ($2,033 25) when corrected. The sum of $2,033 87 below by itself is the same as the consideration sum in the deed. This reckoning-list is in the handwriting of Archibald Dorance Babcock, since deceased, son, and then clerk of the defendant, and was made out by him by direction of his father, and delivered to said Nehemiah in the presence of the defendant and myself, and the same was agreed to by both of the parties as a memorandum showing all the debts said Nehemiah then owed to the defendant individually or otherwise, and secured by the land then conveyed. The list was sent to me by my brother, Nehemiah Wyman, residing in St. Louis.

In answer to the twelfth interrogatory, he saith:

Ans. to int. 12th. The actual consideration of the deed from said Nehemiah to the defendant, dated Nov. 20, 1828, was the sum of two thousand thirty-three dollars and eighty-seven cents, (2,033 87.) I know the fact, because the deed was drawn by me, and it was then admitted by both parties that the sum of two thousand thirty-three dollars and twenty-five cents, as stated in my answer to the eleventh interrogatory, included all the debts of every nature then owed by said Nehemiah to said defendant individually or otherwise. The two amounts differ sixty-two cents. When the total of the debts had been ascertained, I well remember Mr. Babcock's saying to me, "put in for recording the deed," and as sixty-two cents is the sum I had previously paid for recording deeds in Middlesex, I conclude the recording of the deed makes the difference stated, and

that the consideration sum was then after carried to the reckoning-list.

In answer to the thirteenth interrogatory, he saith:

Ans to int. 13th. At the time said conveyance was made it was well understood by both parties and myself that the conveyance was made as security to the debts making up the consideration sum in the deed; and Mr. Babcock kept the notes all for future payment, which, when paid, he was then to reconvey the land.

In answer to the fourteenth interrogatory, he saith:

Ans. to int. 14th. After I had prepared the deed, the said Nehemiah yet demurred signing it, wishing still to keep possession of the land itself, and while he was so demurring I well remember that Mr. Babcock turned to me saying, "Why, Mich can have the land again at any time;" that was, when he had paid the debts it was intended to secure. He then finally, though reluctantly, signed the deed under the full promise, both by Mr. Babcock and myself, that he should have the land back again whenever he should pay the debts then secured by it.

In answer to the fifteenth interrogatory, he saith:

Ans. to int. 15th. The notes given prior to the date of said deed, Nov. 20th, 1828, by said Nehemiah to said defendant, and also those given to Francis Wyman, and making up the consideration sum in the deed, were all retained by Mr. Babcock. The two mortgaged notes for $676 and $650, given to Francis Wyman, I think were in the handwriting of Joseph Tufts. The two notes $486 79 and $8 10 were in my handwriting, and the note of $50 was in Nehemiah Wyman's handwriting. None of these notes were given up by the defendant, nor cancelled in any way at the time of said conveyance, but were all kept and intended to be kept by Mr. Babcock uncancelled for future payment, whenever the said Nehemiah should redeem his land. As to the mortgage note of $1,200, April 26, 1826, I do not recollect anything of it at the time the conveyance was made. As the notes never formed no part of the debt to Mr. Babcock, it was not brought into the reckoning; and besides, it was then done away with as being held any longer as security, by the conveyance which secured all the real debts. I saw the mortgage-deed itself, however, in Mr. Babcock's hands, in 1851, then uncancelled, and not discharged upon the records.

In answer to the sixteenth interrogatory, he saith:

Ans. to int. 16th. Two of said notes, one of $486 79, and the other of $50, came into my possession on July 3rd, 1851, after the sale of said land by the defendant; and at the time said notes so came into my hands, I had claimed in behalf of my brother that Mr. Babcock should account to him for the sale of the land. How the notes came into my hands was in this wise. I had an account open with Mr. Babcock of twenty years' standing which I wished settled. I called on Mr. Babcock for what was due the heirs of Nehemiah Wyman, senior, to embrace in said account, as I had bought out the other heirs except one, and had no account then of

what was due. Mr. Babcock produced these two notes, and did not seemingly understand the writing he had made himself on the $486 79 note; but finally told me to take the notes to make up the account, and I did so. After I had made up the account, which contained various other items, I handed the same to him together with the two notes for him to examine. He kept them some days and then declined to settle the account, and gave back to me first the account and then voluntarily the notes, saying that the notes were not his, and would not say or explain to whom they did belong; and as he said the notes were not his, I thought they must belong to the heirs of Nehemiah Wyman, senr. I now produce the said notes; they are marked B and C by the commissioner, and are annexed to my deposition.

In answer to the seventeenth interrogatory, he saith:—

Ans. to int. 17th. The two notes produced by me were given to the defendant. Of the $486 79 note $400 08 were due to him individually, and the rest of it, $86 71, together with the fifty dollar note, was due to him for rent, as agent of the heirs of Nehemiah Wyman, senior.

In answer to the eighteenth interrogatory, he saith:—

Ans. to int. 18th. The agreement of the parties at the time of said conveyance of Nov. 20, 1828, as to the management of said land and the application of the rents, I do not now recollect if anything was said any further than I have already stated in my answer to the 9th interrogatory. The grass grown on the land annually would net just about enough to pay the interest on the debt secured by it and the taxes on the land, and keep the fences in repair, and perhaps something more. It was not then expected that any clay would be dug from the land, but in 1835, 1836, 1837, and in 1838, clay was taken from the land to the value, I believe, from information, of two thousand dollars and upwards, besides sand and ledge-stone.

In answer to the nineteenth interrogatory, he saith:—

Ans. to int. 19th. Prior to the 20th November, 1828, said Nehemiah had sold off from his original lot of said land one acre and $\frac{2}{100}$ for six hundred dollars per acre, and the part sold was no more valuable than the part conveyed to the defendant. The said Nehemiah took back a mortgage and took possession of the land afterwards, and Mr. Babcock occupied and received the rents and profits of it, after November 20th, 1828.

In answer to the twentieth interrogatory, he saith:—

Ans. to int. 20th. The value of said land on Nov. 20th, 1828, I should judge, was about the same as it was at the time of the said sale of a part thereof, by said Nehemiah; and its value in 1844, when sold by Mr. Babcock, I should estimate, was thirteen or fourteen thousand dollars, and he sold it greatly below its value. Not long from that time there were four acres bounded on said

land sold for about two thousand dollars per acre, and no more valuable than my brother's land.

In answer to the twenty-first interrogatory, he saith :—

Ans. to int. 21st. Immediately after I heard the land had been sold, in the autumn of 1844, I called upon Mr. Babcock to ascertain the fact, and asked him if he had sold the land, and why he sold it. He said he had applied to a Mr. Hall, a land agent, or land broker, to sell the land and had given a bond of it. I asked him if the sale could not be stopped by breaking the conditions of the bond, and he replied that it was too late then, that he had deeded the land. I regretted that he had sold it so low, and asked him why he had not informed me of his intention to sell the land, according to the original understanding which was had, in case my brother should be unable to redeem his land whenever Mr. Babcock might want his money. He replied that he supposed I could not do anything if he had. I told him that if he had informed me he would not have sold the land. He said that he had tried to get money on mortgage of his real estate, but could not, to pay the heirs of Francis Wyman, who had prevailed in a suit against him, and he did not like to have execution levied. I told him there was no need of making such a sacrifice; that he might have arranged with the heirs of Francis Wyman to have given them a mortgage; but, said he, "I did not like to do that." He also rejected the claim I had then made to the land in behalf of my brother, and did not consider that he then had any right to the land, and I thereupon replied to him by saying "Why, Mr. Babcock, didn't 'Miah have a right to redeem the land?"—these were the very words. "Yes," he said, "he had the right, but lost it by not redeeming it within six years"—referring, as I understood him, to the Statute of Limitations; and as there had been no time fixed within which my brother was to pay his debt and redeem his land, I thereupon supposed that the Statute of Limitations had really debarred all my brother's rights to his land as declared by Mr. Babcock.

In answer to the twenty-second interrogatory, he saith:

Ans. to int. 22d. Nehemiah Wyman removed with his family from Massachusetts in September, 1835, poor and in debt, and has since continued so, and for several years past he has been living upon his son. His health has been generally good, but he is somewhat broken.

In answer to the twenty-third interrogatory, he saith:

Ans. to int. 23d. The first I knew of said land having been sold was in the autumn of 1844, and did not know that Mr. Babcock designed to sell it until I heard that it was sold. So far as I know, the said Nehemiah did not know of said Babcock's design to sell said land at all, and that he was first apprized of the sale of the same in July, 1851.

In answer to the twenty-fourth interrogatory, he saith:

Ans. to int. 24th. Since the conveyance of said land to Mr. Babcock, it has fluctuated in value, and its value now is over forty thousand dollars.

In answer to the twenty-fifth interrogatory, he saith:

Ans. to int. 25th. After said Nehemiah had learned of the sale of said land by said Babcock, and previous to November 8th, 1851, I had had different conversations with Mr. Babcock at his house, claiming, as agent of said Nehemiah, that he should account to him for the value or proceeds of the sale of the land, and urged him to do what was right, and adjust the account between them fairly. At one time he would say that he purchased the land outright and paid for it, and had a deed of it to that effect. At another time he would say he bought the land and paid for it in 'Miah's notes, and gave them up to him; yet he had kept both land and notes. At another time he would say that a time was fixed within which the land was to be redeemed, and when asked what the time fixed was, he replied, "I don't know." Those were his very words. At another time he would say if 'Miah would produce his bond, he would settle it, when he knew that he had no such bond. The conversations were general, and I can't discriminate between them. The substance of the whole was that I claimed for the said Nehemiah that Mr. Babcock should account to him for the value of the land or for the proceeds of the land, and he objected to doing so. I acted in this matter as the agent of my brother, and at his special request. Some of these conversations may have occurred before then.

In answer to the twenty-sixth interrogatory, he saith:

Ans. to int. 26th. After said sale of the land, and previous to Thursday, November 6th, 1851, I had had various interviews with said Babcock as to adjusting the claims of the said Nehemiah. On the evening of the day last named, I called upon Mr. Babcock at his house, and show him a paper I had made from the original reckoning memorandum, then recently sent me by my brother, and showing a list of the debts secured by the conveyance of the land. He then said the paper shown him was an original of my own, made up at the then present time; but I told him the paper was taken from the original memorandum, made at the time when the land was conveyed. He then asked me who made the original memorandum, and I replied that it was not made by me or by 'Miah. He then again asked me by whom it was made, and I again made the same reply. He then said he had no recollection of making any such paper himself, and seemed somewhat disquieted. Finally, after some more talk relating to the matter, which I do not now recollect, and as I were about leaving him to go home, he followed me out into the yard, and wished me not to write 'Miah, as I was about to do in regard to it, until he should see me; and said he guessed he should settle it up, and then added, "I suppose 'Miah would take my note on a long time and

give me no trouble about it?" Those were his very words. I replied that I had no doubt he would. He then said he would call and see me on the morrow, or the day after, and I then went home. Accordingly on the next Saturday morning, November 8th, 1851, Mr. Babcock called to see me at my residence, seemingly a good deal embarrassed, and then declared that he had never intended to do wrong about this, William, and wanted to do right, he said, if he knew what it was; and thereupon asked me to let him see the memorandum which my brother had sent me, and I did so. After he had looked the memorandum carefully over, I then asked him in whose handwriting it was, and he replied, "Dorrance's, isn't it?" meaning his son, then deceased. I answered, yes. He then expressed a willingness to settle it up, and asked me, while he still held the memorandum in his hand, looking at it, how ought this, or how should this, be settled? and I replied to him, saying that he should first charge 'Miah with all his notes with interest on them annually, and then credit him with what he sold the land for, and what he got off the land with interest annually, and be allowed a fair commission for his trouble. He then said, "I can't tell how much I have got of the land, but that (said he) we'll leave to two good men," and I answered, yes; "and (said he) 'Miah will take my note on a long time," and I replied yes. He then expressed himself willing to settle it up, and by what he said would give his note for what he owed when the account should be adjusted. He then appeared in a hurry, and said he must go to Boston to see or meet a man there at ten o'clock, (and it was then about that hour,) and would come in again and see me. He having so agreed to settle the account, I told him that if he was going to Boston, he had better call in and ask Mr. Bartlett to stop any proceedings in the case, saying, that by doing so, then it might perhaps save the expense of preparing a bill in equity, if not then yet made, before I should see Mr. Bartlett myself. He said he would do so, and subsequently he and Mr. Bartlett both told me that he had done so. I also gave him at the time a list of the debts my brother owed him. Directly after Mr. Babcock had gone to Boston, I then made up an account upon the principle I had named, except what part he had got off the land, and for which latter I intended to propose a compromise, so as to settle the whole without referring any part of it, and to have the account ready for Mr. Babcock when he should call in again and see me, as he had said he would do. After waiting several days, expecting every day that Mr. Babcock would call and adjust the account, I sent a second time for him to call in and see me, and he did so, on the 20th November, 1851. He then stated that after seeing me, (which was on Nov. 8,) he had seen Charles G. Loring, esq., who had advised him that it would be right for him to pay me my claim, being that of the heirs of Nehemiah Wyman, senior, and the sum to Nehemiah Wyman in the deed, and that was all, and having nothing to do with what the land sold

for. I told him that he had already agreed to settle the account and give his note, but he replied that he wanted to find out first what was right for him to do. I replied to what Mr. Loring had advised him, by saying that the opinion was so entirely adverse to Mr. Bartlett's that he could not have stated the case understandingly to Mr. Loring, and that I then saw no other way but for him to pay me, which he might then do by his giving me his note, and stand a suit with 'Miah. But this reply did not seem to satisfy him, and he wished me to go with him to Mr. Loring, and state the affair as I understood it, and I agreed to do so—he to get Mr. Loring to name the time when he could see us both together, and to let me know. Some days afterwards, in the same November, Mr. Babcock called on me again at my residence, and stated that he had seen Mr. Loring to know when he could see us both together, for me to represent the case; and told Mr. Loring that he was apprehensive he might not understand his case, but that Mr. Loring said that it was unnecessary for me to see him, for that he did understand his case very well, and told Mr. Babcock that if the land was conveyed as security, it was necessary to have it so expressed in the deed, or otherwise that a bond should be given back; that if neither of these were done, he could hold the land, and that it would be right for him to pay me my claim and nothing more. So saying, Mr. Babcock then declared that he should pay me my claim and there let the case rest. I thereupon asked him to give me his note for my claim then, and have it settled. He declined doing so, saying he wanted me sign a sealed paper to be prepared by Mr. Loring, but I told him that a simple receipt for the sum was, I thought, sufficient. He then took his departure. It subsequently appeared that before paying me what was due the heirs of Nehemiah Wyman, senior, he required that I should sign said paper for myself and for my brother, which paper was to be a bond of indemnity against making any claim to the said land. This is what he subsequently stated to me.

In answer to the twenty-seventh interrogatory, he saith:

Ans. to int. 27th. The rentable value of said estate from 1828 to 1844 was in my judgment one hundred and fifty dollars per annum for the grass alone; and what Mr. Babcock might have got off of it during that period in clay, sand, and ledge-stone, I cannot say. I have already stated in my answer, I think, to the 18th interrogatory, that upwards of two thousand dollars' worth of clay had been dug from the land in four years, and much more could have been taken out of it. Good clay-land near Boston used to be considered worth one thousand dollars per acre, where it might not be worth two hundred dollars per acre to cultivate.

In answer to the twenty-eighth interrogatory, he saith:

Ans. to int. 28th. While making examinations at the Middlesex Registry of Deeds, I happened to come to the record of the mortgage of Nehemiah Wyman to Francis Wyman. Seeing it there

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undischarged, I subsequently told Mr. Babcock, that as he had everything secured by the deed of Nov. 20, 1828, he had better discharge it, for that it did not look well for any one to give a warranty deed of an estate as being free of "incumbrances, when the records show that he had himself mortgaged it, and on the 18th January, 1830, Mr. Babcock as trustee discharged the mortgage, as appears by the records. There was no surrender at that time made, or offered to be made, of any notes which said mortgage had been given to secure.

In answer to the twenty-ninth interrogatory, he saith:

Ans. to int. 29th. Knowing that the heirs of Francis Wyman were by the terms of the will to possess their estate in November, 1842, and that Mr. Babcock might then want the money due from said Nehemiah to pay the said heirs, I in the spring or summer of that year reminded Mr. Babcock of the previous understanding that he was to apprise me of any design of a sale and asked him, if occasion should require him to sell the land, to offer it to me, (for I intended to redeem it for my brother who was then yet too poor to do it himself,) and he agreed to do so. No other matter or thing material to the case now occurs to me.

Cross-interrogatories.

In answer to the first cross-interrogatory, he saith:

Ans. to 1st X int. I called upon the defendant in 1851, in June I think it was, and asked him for the notes due the heirs of Nehemiah Wyman, senior, and he then produced two notes, one $486,79, and the other $50, not seperately but both together. I did not then ask permission to look over the defendant's papers, nor did I look over them at that time, but I claimed both notes as belonging to said heirs. He did not admit or deny that the $486 79 note belonged to said heirs, but told me to take them and make up the account current between us then of some twenty years' standing. After making up the account I returned both notes again to Mr. Babcock, together with the account I had made for him to examine. I at that time supposed that the $486 79 note belonged to said heirs. I knew that more than fifty dollars must be due them, and well remember the time when my brother wrote the fifty dollar note himself, for an omission of rent ascertained after a settlement had been made between them, and no other notes were produced at that time by Mr. Babcock, and he did not seemingly understand how it was himself. He finally told me to put them into the account and make it up.

In answer to the second cross-interrogatory, he saith:

Ans. 2d X int. I subsequently called upon the defendant for the payment of the account I had made out and left with him to examine, (amounting to some $1800.) I cannot say that we had a dispute when I asked him to settle it. I was somewhat vexed that he should object to settling the account after he had told me

to include the notes in it. He then claimed that I was indebted to him, but I was not. As to the offer to settle the account for fifteen hundred dollars I do not distinctly recollect of, but it is quite likely that I might have made such an offer as a compromise. Mr. Babcock did not offer to refer the account as then made up to referees, for I should willingly have referred it.

In answer to the third cross-interrogatory, he saith:

Ans. to 3d X int. I have said account here to annex to my answers. The same is marked "(D.) E. Merwin com'ssr" by the commissioner, and is annexed. In 1828 I had bought the interests of six of the eight heirs of my father in his estate, and owned them at the time I made up said account, but I have since sold and transferred all my interest in and to the said two notes, if any I had, of $486 79 and $50 to Edward Wyman, the plaintiff in this suit.

In answer to the fourth cross-interrogatory, he saith:

Ans. to 4th X int. I did leave said account with said Babcock to examine, and did subsequently call upon him and request it of him, and did take it away. I kept the account, and it is the same already produced by me, marked D, and annexed to this deposition.

In answer to the fifth cross-interrogatory, he saith:

Ans. to 5th X int. I have produced said account and it is annexed. Both of said notes, of $486 79 and $50, are charged in said account against Mr. Babcock.

In answer to the sixth cross-interrogatory, he saith:

Ans. to 6th X int. Some eighteen months after taking away said account I made a new account against said Babcock, giving him both debit and credit, and the account marked "A," annexed to said commission, is the said account.

In answer to the seventh cross-interrogatory, he says:

Ans. to 7th X int. Said Babcock did utterly deny the charge for grass or rent of the Foster lot, as contained in said account, and as to his denying others of said items, if he did deny any of them, they were the three items in the account charged next above the charge for grass or rent of the Foster lot—being for clay digged or caused to be digged by him out of the Foster lot, and for which he had received the proceeds as well as for the grass. My brother had in 1835 assigned to me the mortgage he held on the Foster lot, of which he had been in possession as security for money I then loaned him, and from that time afterwards the lot was taxed to me, and I paid and charged the taxes to my brother until he sold me the lot in 1852; though for six or seven years, from 1828 to 1835, the same land was taxed to Mr. Babcock, who was also in possession of the lot, and used it the same as he did my brother's other land. I therefore claimed of Mr. Babcock that I was entitled to receive the rents and profits of the lot after 1835, to place to my brother's credit on account of the taxes I had paid, and the principal and in-

terest of the money due me on the lot I held as security; for because Mr. Babcock had already rejected my brother's claim and right to redeem his other land. After Mr. Babcock sold my brother's other land, in 1844, I received the rents and profits of the Foster lot myself. The notes of $486 79 and $50 are not charged in this second account, and I have no interest now whatever in them.

In answer to the 8th cross-interrogatory, he saith:—

Ans. to 8th X int. I did not by express promise or otherwise agree in any form to save said Babcock harmless and indemnified from all or any loss or damage arising on the bond he signed to the Market Bank, Boston, as security of Thomas Pike, jr., for the faithful performance of said Pike's duties as teller of said bank. When I first asked Mr. Babcock to become one of said Pike's sureties, with myself and others, he said he would do so if I would give him a bond, which I at once declined doing. I did not thereupon prevail upon him to sign the bond to said bank by any promise or otherwise express or implied that I would myself pay all or any sums he might be called upon to pay. He was called upon in June, 1837, to pay as his contribution of the loss the sum of $1,834 49, eighteen hundred and thirty-four dollars and forty-nine cents. I paid three hundred and thirty-four dollars and forty-nine cents of said sum ($334 49) and Mr. Babcock fifteen hundred dollars of it, ($1,500.) I did not promise him in anywise that I would pay the said amount to him again, or any part of it, nor did I ever pay any of it to him. At the time I presented said second account, Mr. Babcock did not claim said sum of $1,500 of me then, as I recollect, but declined settling the account until my brother's account was settled too; and he then kept the account after he had examined it, and refused to give it back. It was after I had presented my first account, in 1851, that he claimed I ought to pay him said sum of $1,500, and that was the first time he had ever asked it of me, then fourteen years after he had paid the sum. Had it been promised by me to hold Mr. Babcock harmless in case of loss, it is difficult to see why no counter bond was given then, when it appears that such a bond had been named. When, after Mr. Babcock signed the bond, he remarked that if he should be called upon to pay anything on it, he didn't know what he should do, for that he had no money, and nothing but real estate; and I then told him that I apprehended no loss myself, and if any such occurred, I would raise the money for him until he could get it, or something to that effect, and I subsequently helped him to the money, as I promised him I would. When the sureties to the bond were called upon, each to contribute his respective share of the loss, I told Mr. Babcock that he might pay $1,500, and I would pay the rest of his share, and I thereupon paid $334 49 for having asked him to be one of the sureties on the bond with me and others.

Had it all belonged to me to pay, I did not need or require any assistance from Mr. Babcock to pay the money for me.

In answer to the ninth cross-interrogatory, he saith:—

Ans. to 9th X int. It was in the autumn of 1844, after he had sold the land, that I first mentioned to said Babcock that my brother had the right to redeem the land deeded to him as security; but it was in June or July, 1851, that I claimed that said Babcock was liable to account to my brother for the value of the land—not the proceeds of sale I think at first—and I did so while urging my own claims upon him.

In answer to the tenth cross-interrogatory, he saith:—

Ans. to 10th X int. It was both in 1844, and in 1851, after I had presented my first account to said Babcock for settlement, and he had refused to pay the same, that I claimed said deed of Nehemiah to him was only as collateral security. Why I then claimed it of him in 1851 was this. Whilst consulting counsel in a case of my own, not long before I presented my first account, I then happened to obtain such information in my own case as led me to believe that the statutes of limitation had not barred my brother's rights to redeem his land, as Mr. Babcock had declared in 1844, and as I had then believed; and therefore being possessed of such information in my own case, I then first intended to settle my own claim of what was due the heirs of Nehemiah Wyman, senior, and then afterwards make claim that Mr. Babcock should account to my brother for the value of the land sold; and when Mr. Babcock refused to settle my account, I then claimed of him that he should so account to my brother for the value of this land, and told him my belief that my brother could get redress by filing in the United States Court a bill in equity to recover the value of his land. Soon after Mr. Babcock surrendered to me the two notes, $486 79 and $50, in July, 1851, saying, as he did, that they were not his, and would not say whose they were. I then wrote to my brother for information concerning them, and also stated that Mr. Babcock had sold his land, and refused to account to him for it. Upon receipt of my letter, my brother wrote not to me, but to his son Edward, who happened to be on here in Boston at the time, for him to look into the matter; and his son then went and consulted Mr. Bartlett about it, and the result of that consultation was, that soon after my brother's son had returned home to St. Louis my brother himself wrote to Mr. Bartlett, requesting him to prosecute his claim against Mr. Babcock, and hence the present suit.

In answer to the eleventh cross-interrogatory, he saith:—

Ans. to 11th X int. I did not call upon Mr. Babcock as owner of the claims of the heirs of Nehemiah Wyman, senior, for an examination of his papers until after I had claimed that he should account to my brother for the value of the land. But some months afterwards I obtained the privilege of such examination. After Mr. Babcock had agreed to account to my brother for the proceeds

and profits of the land, I then promised to return the two notes I had received of him some months before. I did not return said two notes, because the one who then held them declined to give them up to me until the account should be finally settled. After my brother had sent me on papers connected with the settlement of the rent he owed the heirs of Nehemiah Wyman, senior, I then took the papers sent me, and with them and Mr. Babcock looked over his own papers, which he had not until then shown me, and the result of said examination was, that by a large bill of repairs allowed my brother in settlement, together with the dividends of his own share of rents retained, and previously paid to the other heirs, the amount then due from him had been reduced down to eighty-four dollars forty-one cents, ($84 41) besides the $50 note, and it was then agreed by Mr. Babcock and myself that the $86 71 he had written on the $486 79 note was the sum due to said heirs for rent included in said note, and increased $2 38 by interest or otherwise.

In answer to the twelfth cross-interrogatory, he saith:

Ans. to 12th X int. The copies of the deeds and papers mentioned in the 12th X interrogatory, as filed in this suit, are all in my handwriting. The plaintiff's counsel asked me to obtain copies of the said papers, and having leisure then I made the copies myself to save expense to the plaintiff, and I also offered the defendant to make any copies of papers he might want himself in the suit.

In answer to the thirteenth cross-interrogatory, he saith:

Ans. to 13th X int. The deed from Nehemiah Wyman to Edward Wyman is in my handwriting. Plaintiff's counsel made the original draft of the deed, and I copied it. I did not send the deed to said Nehemiah to be executed, nor did he return the said deed to me, nor did I say anything to him about it, nor of the sale of the land it conveyed to said Edward. I have examined the records in the Middlesex Registry of Deeds with reference to this suit so far as to have copied there from the records the deeds I have before stated I have copied, and I have, in behalf of the plaintiff residing in St. Louis, consulted plaintiff's counsel concerning the same. I did not direct said suit to be brought.

In answer to the fourteenth cross-interrogatory, he saith:

Ans. to 14th X int. I did reside in said Charlestown at the time of the conveyance of said land by said Babcock, and did know of said conveyance at or about the time the conveyance was made.

In answer to the fifteenth cross-interrogatory, he saith:

Ans. to 15th X int. So far as I remember there were never any buildings erected on said land before said Babcock sold it, unless it may be that sheds were erected there by the brick-makers themselves, and usually at their own cost, for their own accommodations. I did not go on to the land myself, and cannot say whether or not said Babcock erected thereon any building. I cannot comprehend

how a building worth nearly a $1,000 could be wanted for the accommodation of the ledge on said land, nor do I remember whether any such building was on the land when he sold it, though there may have been a building there then of some kind; and now I seem to recollect that there was one.

In answer to the sixteenth cross-interrogatory, he saith:

Ans. to 16th X int. Said deed from said Nehemiah was made in pursuance of the recommendation of the counsel in the case, for the purpose of enabling said Nehemiah to be a witness. The suggestion and the advice came from the counsel, and that was the first I knew of it. The said Nehemiah has not visited Charlestown since October, 1853, when, after passing the summer there with his wife, he returned home with her to St. Louis.

In answer to the seventeenth cross-interrogatory, he saith:

Ans. to 17th X int. I am not pecuniarily interested in the result of this suit in any wise, nor do I expect any benefit from this suit if the plaintiff is successful. I have no agreements or understandings of any kind between me and said Nehemiah or said Edward whereby my services in this suit, if any, are to be rewarded, and whereby I expect to derive a particle of benefit, nor do I hope to nor will I ever receive the value of a dime's compensation therefor from either of them in any form; and I have no hope in the matter other than to see the account adjusted fairly between the plaintiff and defendant.

In answer to the eighteenth cross-interrogatory, he saith:

Ans. to 18th X int. The annexed paper shown me, marked "B," in the margin, is mostly in my handwriting. It was originally all in my hadwriting; it is but a part of the paper I produced to Mr. Babcock, and a part of its caption is torn off and gone, and it is otherwise altered by Mr. Babcock by words inserted in it. It is easily seen that a part of the caption is gone by the nearness of the line remaining to the top and by the tails of the letters of the part gone coming down on to the part remaining; it is torn off quite parallel with the upper line, which line now begins with a small *l*. I am not apt to begin the caption of a paper other than with a capital letter. The paper was not produced by me to said Babcock as a memorandum showing the consideration of said deed of Nov. 20, 1828, though it contains a like amount; but I did produce the entire paper to him, as showing a list of all the notes and debts owed by my brother Nehemiah to said Babcock, and secured by the conveyance of the land on Cambridge road, 20th Nov., 1828, and the entire caption before torn off show it to be such. The memorandum at the bottom of the paper was made to sever the Nehemiah Wyman's heirs' claim from Mr. Babcock's in the $486 79 note seen above, and to show also what said note was made up of. I gave the paper to Mr. Babcock entire and unaltered on Saturday, Nov. 8th, 1851, at my house, at the time when and after he had agreed to account to my brother for the proceeds of the sale and

the rents and profits of said land. When he took the paper from me he said, "then $400 of the $486 79 note belongs to me;" and I replied, yes; and said that I would return to him the two notes he had given me, $486 79 and $50.

In answer to the nineteenth cross-interrogatory, he saith:

Ans. to 19th X int. Said Foster lot was sold in a narrow piece for the purpose of a ropewalk; and it was not sold for a larger price for that reason, for it left the land from which it was taken in as good shape as before. The lot is sixty-six and one-third feet on the street, and runs back, holding quite the same width, about four hundred and eighty feet, and then widens to ninety feet on the back line, which line is distant about six hundred and forty feet from the front line on the street. A part of a ropewalk was erected thereon, blew down, and afterwards taken off by my brother. The entire purchase-money was secured by mortgage of the lot, and none of it was ever paid by said Foster, as far as I know; but there was interest paid on the sum. I now own said land, and purchased the same of my brother Nehemiah for sixteen hundred dollars, November 1, 1852, and I have his release for the same, made at the time. It is marked (F,) and is annexed to my deposition. The reason that I paid no more than $1,600 for said land was because it was not worth so much by itself as when belonging to my brother's other land. There is no way of entrance to the lot but by the road, and it will take a large share of the land with which to make a street, and the lots then bounded on the same will not be deep enough. Lots on the land sold by Mr. Babcock, and backing on the Foster land, have been sold for twelve and a half cents per superficial foot, and I have been recently offered the same price for the most of mine, but do not sell yet, because it will take so much for a street.

In answer to the twentieth cross-interrogatory, he saith:

Ans. to 20th X int. Said Babcock's embarrassment for ready means, as stated in my answer to direct interrogatory No. 21, I think arose from the large amounts he had to pay about that time to the heirs of Francis Wyman, some seven or eight thousand dollars, I think; and what he lost by the Phœnix Bank some two years before may have added so much to his said embarrassment. Said Babcock did not, by my request, invest three thousand or any other sum belonging to the heirs of Francis Wyman in the stock of said bank. He was one of its first directors when I was cashier of another bank, and did not expect to be an officer in the bank where he was a director. He had already agreed to take his stock before I had been appointed an officer of such bank. He took the certificates of stock in his own individual name, pledged it as his own to the bank for loans obtained, and also transferred the stock to another bank as security for his son's indebtedness to the same, and used the stock in every respect as his own. The stockholders have

received no income from the stock of the bank since its failure, and they have suffered a total loss of their stock so far.

In answer to the twenty-first cross-interrogatory, he saith:

Ans. to 21st X int. The annexed paper showed me, (marked C,) is in my handwriting, and also the endorsement on the back of it, except the word "Charlestown." It was made by me for said Babcock in or about the year 1831. I cannot say certainly that the paper was submitted to the proper commissioners for the purpose of inducing them to purchase the land for a State lunatic hospital, yet I presume it was so submitted to them by Mr. Babcock. It was drawn by me at Mr. Babcock's request for that purpose. I cannot say whether I approved of it, though I may have done so. All I can remember now about it is, that Mr. Babcock came to me and said he wanted his money, and asked me to make the paper, which I did. As to any mention then of my brother's rights, I cannot state any more than I have. It could not be, however, but that my brother's rights were well understood at that time. In recurring to the matter in 1851, Mr. Babcock admitted to me then that if he had sold the land at that time, all that it sold for over the debts secured by it would have been paid by to my brother.

In answer to the twenty-second cross-interrogatory, he saith:

Ans. to 22d X int. I do not recollect of ever having called upon Mrs. Babcock at all, and complained that he had not sold said land to me. After I first heard of the sale of said land, I then immediately called upon Mr. Babcock at his house in the evening and claimed my brother's rights, as I have already stated, in answer, I think, to direct interrogatory No. 21; and Mrs. Babcock may have been present some part of the time, and I think she was; and she may then have heard me complain of Mr. Babcock not having notified me, according to the understanding that he would do so whenever he designed to sell the land; or it may be that while I was with her alone at the house at other times afterwards that I may have then complained that I was not informed according to promise, so as to pay the debt myself, and take the land for my brother, because he continued unable to redeem it of Mr. Babcock himself, and in no other way could my sister have ever rightly understood me, for I never wished to buy the land for myself, but to redeem it for my brother; and besides I was not in a situation then to buy the land myself.

In answer to the twenty-third cross-interrogatory, he saith:

Ans. to 23d X int. Said notes for $50 and $486 79 are already annexed to this deposition. On the face of said note $486 79 there is written in Mr. Babcock's handwriting these figures and words, "$86 71 out of this note I do not warrant to collect," but said writing was not made on the note Nov. 20th, 1828, nor do I know the time it was made. Said writing on the note may have been subsequently made to sever it, because I fixed the consideration of said deed so as to include said $50 note, and the whole of

said $486 79 note, of which last sum $86 71 was the money due the heirs of Nehemiah Wyman, senior. I do not know when or why said writing was made on the note, but I do know that it was not made pursuant to any agreement or understanding between said parties at the time that said Babcock would give or not give for said land said entire sum named as the consideration in said deed, or any other sum less or more. Said Babcock did not then agree that he would pay any sum for the land, but he may have said that he would not agree to pay said $50 note and said sum of $86 71, in case the security of the land should subsequently prove insufficient to pay his own claims and them too. Said annexed paper marked "B" was not made until 1851. The fact is that the land was conveyed to said Babcock as security for the whole indebtment, as by the reckoning memorandum, and also to insure its income to pay the interest on the notes due the widow and children of Francis Wyman, until my brother could pay said indebtment and redeem his land. And Mr. Babcock's own claims having been previously secured by the $1,200 mortgage, he very justly claimed that the security then given him should be held to pay his own claims first, before the claims of the heirs of Nehemiah Wyman, senior, who had not been secured by said mortgage, and it was so agreed by the parties. Knowing that Mr. Babcock had the power by the absolute terms of the deed to sell the land at any time to pay himself, there was an understanding then had that he would not do so without first giving notice of any design so to do. After getting papers which explained the $486 78 note, I then inferred that the writing on said note was made by Mr. Babcock subsequently to sever from it the sum due the heirs of Nehemiah Wyman, senior, and also to show at the same time that he was not to pay said sum in case the security in the end should prove insufficient to pay it, together with the $50 note, as his own claims were held to be paid first. There is also written on the face of the $50 note by Mr. Babcock these words, "This belongs to the Wyman heirs."

In answer to the twenty-fourth cross-interrogatory, he saith:

Ans. to 24th X int. Said mortgage of Nehemiah Wyman to Francis Wyman was not discharged on the records at my suggestion, because said Babcock was about to offer said land for sale. He did not design to sell the land then, so far as I know. The discharge of the mortgage was suggested by me solely because it did not look well there upon the records for my brother to have made warranty deed of the land while the same records made it appear that it had been before and still remained incumbered by him. One of the three notes secured by said mortgage was paid on or about December 1st, 1824, and the other two notes were never given up, so far as I know, for I have never seen them since they were left in Mr. Babcock's hands, together with the other notes, at the time when said land was conveyed, Nov. 20, 1828. As to the said two mortgaged notes, Mr. Babcock told me, in 1851, that he had seen

them somewhere in his own possession since the land was conveyed, but having their signatures erased; and I thereupon told him the signatures were not erased at the time, and that if they were really erased, he did it himself, after he supposed the whole matter was outlawed; and he didn't deny it; and by the way he expressed himself, I concluded he still held the notes then. Said discharge on the records was not made with reference to the sale of said land for the Massachusetts lunatic hospital or otherwise. The said discharge was made before any act or resolve of the Legislature was passed to authorize said hospital to be established, or the appointment of any commissioners to locate it.

In answer to the twenty-fifth cross-interrogatory, he saith:

Ans. to 25th X int. I have not stated that said lands was the birthplace of said Nehemiah. It is land of which my father died seized, and was sold by his administrator to my brother for payment of debts.

In answer to the twenty-sixth cross-interrogatory, he saith:

Ans. to 26th X int. Said Nehemiah occupied said land before 1828, and said Babcock occupied it after said date.

In answer to the twenty-seventh cross-interrogatory, he saith:

Ans. to 27th X int. Joseph Tufts, esq., of said Charlestown, sold said land to said Nehemiah Wyman as administrator of my father's estate. Said Tufts did not make the writings at the conveyance of said Nehemiah Wyman to said Babcock. No one of the legal profession was consulted or employed in the matter. The deed of Nov. 20, 1828, from said Nehemiah to said Babcock, was drawn by me in my own handwriting, was witnessed by myself and two of my sisters, and was acknowledged, I think, before Henry Gardner, jr., not a lawyer, but Mr. Babcock's next-door neighbor. Said Tufts died in July, 1835.

In answer to the twenty-eighth cross-interrogatory, he saith:

Ans. to 28th X int. It was at the conversation in the autumn of 1844, as stated, I think, in my answer to direct interrogatory No. 21, that Mr. Babcock said my brother Nehemiah had lost his right to redeem the land by not having redeemed it within six years, by the statute of limitations. It was at other conversations at his house in 1851, and previous to Nov. 8th, as stated, I think, in my answer to direct interrogatory No. 25, that said Babcock said that there was a time fixed within which the land was to be redeemed, but that he didn't know what the time fixed was. It was said while I was urging him to adjust the matter with my brother. It is difficult to discriminate between the various conversations, nor can I state all that was said. In answer to this question, I cannot state anything further than I have already stated in my answers to the twenty-first and twenty-fifth direct interrogatories.

Additional direct interrogatories.

In answer to first additional direct interrogatory, he saith:

Ans. to 1st ad. dir. int. At the time the plan annexed to defendants interrogatories was made, the value of said land, compared with its value in Nov., 1828, was much less. In 1829, I think it was, there was a financial crisis, many failures occurred, houses became vacant, rents low, and real estate generally much depressed.

In answer to the second additional direct interrogatory, he saith:

Ans. to 2d ad. direct int. In one of my conversations with Mr. Babcock in 1851, he declared that he owed 'Miah nothing, but that 'Miah owed him instead, and he then produced a note of $8 10, and claimed it as then yet due him from my brother. After I had obtained the reckoning memorandum from my brother, I called upon Mr. Babcock, and asked him to refer to the note he had said my brother owed him, and he thereupon produced it from his file, and the same proved to be the note of $8 10 in my handwriting, dated Nov. 11th, 1828, given for the balance of the store account of goods, in no wise cancelled, and also contained in the reckoning list.

The said deponent makes the following additions and corrections to his answers to the foregoing interrogatories and cross-interrogatories, namely:

I desire to substitute in my answer to the eleventh cross-interrogatory for the sum of $2 38, therein inadvertently stated, the true sum, which is $2 30.

I have here the same account which I made up as it now is, and as far as it goes on the eighth of November, 1851, directly after Mr. Babcock had agreed on that day to make a settlement, and give his note for what should be due from him to my brother, as stated, I think, in my answer to the 26th direct interrogatory. The account is marked "G," and is annexed to this deposition. The offer on my part for my brother was then made as a compromise, for I had previously claimed for him that Mr. Babcock should account to him for the value of the land sold for less than its worth.

And further the deponent saith not.

WILLIAM WYMAN.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

On the sixth day of October, A. D. 1854, personally appeared before me, the subscriber, the said William Wyman, the deponent named in the annexed commission, and the said deponent was by me first carefully examined and cautioned, and sworn to testify the whole truth, and he did thereupon give the foregoing deposition in answer to the several interrogatories and cross-interrogatories to said commission annexed. Said deposition was taken separate and apart from all persons save said deponent and myself, and in all other particulars the directions contained in said commission were complied by me in the taking of said deposition.

In witness whereof, I have hereunto set my hand and seal.

ELIAS MERWIN, *U. S. Commissioner.*

(A.)

E. Merwin, Commissioner.

2. Notes against N. Wyman, in favor of F. Wyman.

	$650 00	
	676 00	
Principal,	$1,326 00	
Interest from Dec. 1, 1826, to Dec. 1, 1827, 1 y'r	79 56	
	$1,405 56	
In't from Dec. 1, 1827, to Nov. 20, 1828, 11 2-3ds mos	81 99	
		$1,487 55
		23
		$1,487 32
1 note against N. Wyman, in favor of A. Babcock, bearing date of Nov. 7th, 1828, principal	$486 79	
Interest, 13 days	1 04	
		$487 83
1 note against N. Wyman		8 10
1 note against N. Wyman		50 00
		$2,033 48
		$2,033 87

(B.)

CHARLESTOWN, *November* 7, 1828.

For value received, I promise to pay Mr. Archibald Babcock, or order, four hundred and eighty-six dollars and seventy-nine cents on demand, with interest. ($486 79.)

NEH. WYMAN.

[$86 71 out of this note I do not warrant to collect.]

(C.)

CHARLESTOWN, *Nov.* 11, 1828.

For value received of Archibald Babcock, I promise to pay him, or order, fifty dollars on demand, with interest. ($50.)

NEH. WYMAN.

[This belongs to the Wyman heirs.]

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(D.)

E. Merwin, Commissioner.

DR. *Archibald Babcock, in account current and interest account to January 1st, 1851, with Wm. Wyman.* CR.

			Interest.	
1831.	Jan'y 1.	To 7-20ths of $41 rec'd for rent, upland and marsh, 1830-20..	$31 65	$14 35
1832.	Jan'y 1.	To 7-20ths of $41 rec'd for rent, upland and marsh, 1831-19..	29 05	14 35
1833.	Jan'y 1.	To 7-20ths of $33 rec'd for rent, upland and marsh, 1832-18.	21 40	11 55
1834.	Jan'y 1.	To 7-20ths of $45 rec'd for rent, upland and marsh, 1833-17.	26 64	15 75
1835.	Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1834-16.	26 94	17 50
1836.	Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1835-15.	24 42	17 50
1837.	Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1836-14.		17 50
1837.	Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunker Hill, 1836-14.....	27 88	4 63
1838.	Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunker Hill, 1837-13.....		4 63
1838.	Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1837-13.	25 05	17 50
1839.	Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1838-12.		17 50
1839.	Jan'y 1.	T 213-368ths of $8 rec'd for rent, land, Bunker Hill, 1838-12.....	22 38	4 63
1840.	Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunker Hill, 1839-11.....		4 63
1840.	Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1839-11.	19 87	17 50
1841.	Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1840-10.		17 50
1841.	Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunker Hill, 1840-10.....	17 49	4 63
1842.	Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunker Hill, 1841-9		4 63
1842.	Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1841-9...	15 25	17 50

1843. Jan'y 1.	To 7-20ths of $50 rec'd for rent, upland and marsh, 1842-8...			17 50
1843. Jan'y 1.	To 213-368ths of $8 rec'd for rent, land, Bunker Hill, 1842-8.....		13 13	4 63
1851. Jan'y 1.	To cash rec'd of B. T. Blodget for clay, Jan'y 1, 1835-16.		67 73	44 00
1851. Jan'y 1.	To cash rec'd of B. T. Blodget for clay, Jan'y 1, 1836-15,		94 20	67 50
1851. Jan'y 1.	To cash rec'd of Wm. C. Davidson, for clay, Jan'y 1, 1837-14.....		49 35	39 17
1851. Jan'y 1.	To grass, or rent of the Foster lot, from 1835 to 1844, inclu.		86 91	120 00
" " 1.	To N. Wyman's note, due the heirs, dated Nov. 7, 1828, 22, 125.....		1,282 54	486 79
" " 1.	To N. Wyman's note, due the heirs, dated Nov. 11, 1828, 22, 121.....		131 61	50 00
" " 1.	To balance of interest account..			1,247 02
		Dolls.	2,013 49	2,280 39
1851. Jan'y 1.	To balance due W. Wyman, brought down.....			$1,824 70

[Cr.]

1851.			
Jan'y 1.	By amount dividend due from F. M. Kenna, June, '31, 19-7.....	$42 85	$20 12
Jan'y 1.	By amount bill repairs, fences, &c., from 1830 to 1842, avg., 15.....	6 92	4 96
Jan'y 1.	By W. Wyman's note, dated Feb. 2, 1832, given up—18-11.....	660 81	355 61
Jan'y 1.	By W. Wyman's note, dated June 8, 1841, B. T. Blodget, 9-6-24.	55 89	75 00
Jan'y 1.	Balance of interest account.....	1,247 02	
Jan'y 1.	By balance due W. Wyman, carried down.....		1,824 70
		$2,013 49	$2,280 39
		$2,013 49	2,280 39

(F.)

Nehemiah Wyman to William Wyman. Release of land mortgaged by James Foster, Nov. 1, 1852.

Whereas Nehemiah Wyman, on the eighth day of September, 1835, assigned and made over to William Wyman a certain mortgage deed of land signed by James Foster, and also the note of six hundred and nine dollars therein mentioned, as security for certain money then loaned by said William to said Nehemiah—now, therefore, be it known that I, the said Nehemiah Wyman, in consideration of the sum of sixteen hundred dollars to me paid, in settlement by the said William Wyman, the receipt whereof is hereby acknowledged, do hereby release to him all right or claim I now have or in anywise ever had, to the said mortgage deed and note, or to the land described therein—having received from said William full payment and satisfaction in every respect concerning the same.

NEHEMIAH WYMAN.

Saint Louis, November 1st, 1852.

(G.)

N. Wyman vs. A. Babcock. Statement of claim.

The annual rent of the land, besides keeping the fences in repair, and paying the taxes, 11 5-8ths acres, at $13 per acre, is			$151 13
The annual interest on $2,033 87, to be deducted, is			122 03
Making the annual rent over the annual interest			$29 10
The annual rent over the interest for 16 years to Oct. 3, 1844, is, at $29 per annum		$464 00	
The interest thereon is		280 31	$744 31
The land sold, Oct. 3, 1844, as follows:			
Gustavus V. Hall, 4 acres	$2,800 00		
Charles Pierce, 7 1-2 acres	5,250 00		
	$8,050 00		
Deduct the sum loaned	$2,033 87	$6,016 13	
Interest thereon, to Oct. 3, 1851, is		3,027 92	$9,044 05
The rent of the Foster lot, 6 years, to 1834, inclusive, is		72 00	
Interest thereon to Oct. 3, 1851, is		153 29	$225 29
			$10,013 65